

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE: NATIONAL ) MDL No. 2804  
PRESCRIPTION OPIATE )  
LITIGATION ) Case No.  
 ) 1:17-MD-2804  
 )  
THIS DOCUMENT RELATES TO ) Hon. Dan A.  
ALL CASES ) Polster  
 )

Thursday, June 6, 2019

HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER  
CONFIDENTIALITY REVIEW

16 Videotaped Deposition of LAURENCE C.  
BAKER, Ph.D., held at JONES DAY, 1755  
17 Embarcadero Road, Palo Alto, California,  
commencing at 9:18 a.m., on the above date,  
18 before Debra A. Dibble, Registered Diplomate  
Reporter, Certified Realtime Reporter,  
19 Certified Realtime Captioner, and Notary  
Public.

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	Page 2	Page 4
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1	DEPOSITION EXHIBITS		1	DIRECT EXAMINATION
2	LAURENCE C. BAKER, Ph.D.		2	BY MR. GOTTO:
3	June 6, 2019		3	Q. Good morning, Professor Baker.
4	NUMBER DESCRIPTION PAGE	9	4	A. Good morning.
5	Exhibit 1 Plaintiffs' Notice of Oral Videotaped Expert Deposition of Lawrence Baker		5	Q. How are you today?
6			6	A. Fine. Thanks.
7	Exhibit 2 The Effects of Medicare Advantage on Opioid Use, Baker, et al.	10	7	Q. Great. My name is Gary Gotto,
8			8	and with me is my colleague Erika Emerson.
9	Exhibit 3 6-5-19 invoices for Professor Laurence Baker	10	9	We're with the law firm Keller Rohrback, and
10	Exhibit 4 6-5-19 invoices for Analysis Group	11	10	we're one of the firms representing the
11			11	plaintiffs in the opioid litigation.
12	Exhibit 5 5-10-19 Expert Report of Laurence C. Baker	12	12	We've never met before today;
13	Exhibit 6 Corrections to Expert Report of Laurence C. Baker	12	13	correct?
14			14	A. I think that's correct.
15			15	Q. I realize you've given
16			16	depositions previously, so I won't belabor
17			17	the deposition ground rules and that sort of
18			18	thing. I will tell you if any of my
19			19	questions are unclear to you in any way,
20			20	please let me know and I'll do my best to
21			21	clarify them. Okay?
22			22	A. Okay.
23			23	Q. I'm going to begin by handing
24			24	you what we've marked as Exhibit 1, which is
		Page 7		Page 9
1	PROCEEDINGS		1	the notice of today's deposition.
2	(June 6, 2019 at 9:18 a.m.)		2	(Baker Deposition Exhibit 1,
3	THE VIDEOGRAPHER: We are now		3	Plaintiffs' Notice of Oral Videotaped
4	on the record. My name is Jim Lopez.		4	Expert Deposition of Lawrence Baker,
5	I'm a videographer for Golkow		5	was marked for identification.)
6	Litigation Services. Today's date is		6	Q. (BY MR. GOTTO) Why don't you
7	June 6, 2019, and the time is		7	take a look at that document and tell me if
8	approximately 9:18 a.m. This video		8	you've seen it before.
9	deposition is being held in Palo Alto,		9	A. Yes, I have seen this before.
10	California, in the matter of In Re:		10	Q. And Exhibit A to the notice
11	National Prescription Opiate		11	requests certain documents be produced. I
12	Litigation, Case No. 1:17-MD-2804, for		12	understand from counsel you do have some
13	the United States District Court for		13	responsive documents for me; is that correct?
14	the Northern District of Ohio, Eastern		14	A. Yes.
15	Division. The deponent is Laurence		15	Q. Perhaps we could share those at
16	Baker. Counsel will be noted on the		16	this time.
17	stenographic record.		17	MR. BREWER: So for the record,
18	The court reporter is Debbie		18	this is a document entitled The
19	Dibble, and she will now swear in the		19	Effects of Medicare Advantage on
20	witness.		20	Opioid Use. It's an NBER working
21	LAURENCE C. BAKER, Ph.D.,		21	paper authored by Professor Baker.
22	having first been duly sworn, was examined		22	MR. GOTTO: Okay.
23	and testified as follows:		23	Let's go ahead and mark that --
24	* * *		24	we'll mark that as Exhibit 2, please.

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<p>1                   (Baker Deposition Exhibit 2,      2       The Effects of Medicare Advantage on      3       Opioid Use, Baker, et al., was marked      4       for identification)</p> <p>5       MR. GOTTO: Is there anything      6       else that's responsive?</p> <p>7       MR. BREWER: Not to that -- not      8       to item No. 1.</p> <p>9       MR. GOTTO: Okay. How about to      10      item No. 2?</p> <p>11      MR. BREWER: In response to      12      item No. 2, I have two sets of      13      invoices. One from Professor Baker      14      and then one from the support staff      15      that he used at the Analysis Group.</p> <p>16      MR. GOTTO: Okay. Great.</p> <p>17      MR. BREWER: I'll hand you      18      those. There are six copies of each.</p> <p>19      MR. GOTTO: Okay. So let's      20      mark, as Exhibit 3, Professor Baker's      21      invoice.</p> <p>22      (Baker Deposition Exhibit 3,      23      6-5-19 invoices for Professor Laurence      24      Baker, was marked for identification.)</p>	<p>1       we just, for logic, we'll mark the      2       report first and then the corrections.      3       Let's mark that as 5, please.      4       (Baker Deposition Exhibit 5,      5       5-10-19 Expert Report of Laurence C.      6       Baker, was marked for identification.)      7       MR. GOTTO: And then that will      8       be 6.      9       (Baker Deposition Exhibit 6,      10      Corrections to Expert Report of      11      Laurence C. Baker, was marked for      12      identification.)      13      Q. (BY MR. GOTTO) Okay. Now that      14      we have the documents marked, I have just a      15      few questions for you on them.      16      If you would turn to Exhibit 2,      17      the working paper.      18      A. Yes.      19      Q. And at the same time, if you'll      20      look at Exhibit A to Exhibit 1. Item one on      21      Exhibit A asks for all documents or other      22      materials you reviewed since the date of your      23      report that you have not specifically      24      identified in your report in preparation for</p>
<p>1       MR. GOTTO: And as Exhibit 4,      2       the Analysis Group invoice.      3       (Baker Deposition Exhibit 4,      4       6-5-19 invoices for Analysis Group,      5       was marked for identification.)</p> <p>6       MR. GOTTO: I take it that's      7       all that's responsive to point 2?</p> <p>8       MR. BREWER: Yes.</p> <p>9       MR. GOTTO: And anything      10      responsive to point 3?</p> <p>11      MR. BREWER: No.</p> <p>12      MR. GOTTO: Okay.</p> <p>13      MR. BREWER: Meaning that the      14      CV he attached is up-to-date.</p> <p>15      MR. GOTTO: Right.</p> <p>16      And then were there some      17      corrections to -- or a supplement to      18      the report?</p> <p>19      MR. BREWER: Yes. This      20      document is titled Corrections to      21      Expert Report of Laurence C. Baker,      22      and it contains a few corrections to      23      his expert report.</p> <p>24      MR. GOTTO: Okay. So why don't</p>	<p>1       your expected testimony.      2       And I understand that Exhibit 2      3       is -- was produced in response to that      4       request; correct?      5       A. Yes. That's correct.      6       Q. Okay. So that is a document      7       you reviewed in anticipation of today's      8       testimony?      9       A. Yes.      10      Q. And apart from Exhibit 2 and      11      apart from the materials that are identified      12      in your expert report, have you reviewed any      13      other materials in preparing -- in      14      preparation for today's testimony?      15      MR. BREWER: Objection, form.      16      THE WITNESS: No, I don't      17      believe I have.      18      MR. GOTTO: Okay. Great.      19      Q. (BY MR. GOTTO) Exhibit 3      20      appears to be an invoice for your services      21      for the periods April 1 through May 31 of      22      2019; correct?      23      A. Yes.      24      Q. And is that the only invoice</p>

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<p>1 you've issued for services performed in      2 connection with this litigation?</p> <p>3 A. Well, I would clarify that it's      4 an invoice that was issued by Analysis Group.</p> <p>5 Q. Okay. The invoices for your      6 services, though?</p> <p>7 So let me ask the question a      8 different way. To your knowledge, have there      9 been any other invoices issued for your      10 services in connection with the opioid      11 litigation other than Exhibit 3?</p> <p>12 A. Not to my knowledge.</p> <p>13 Q. Okay.</p> <p>14 And Exhibit 3 indicates an      15 amount of \$65,000 and change for expert      16 professional services. I believe in your      17 report you indicate an hourly rate of \$875 an      18 hour? Am I remembering that correctly?</p> <p>19 A. Yes. That's correct.</p> <p>20 Q. Okay. And so would -- if I      21 divided 65,537.50 by 875, would that give me      22 the number of hours you spent on this      23 engagement in the months of April and May of      24 2019?</p>	<p>1 A. Yes.      2 Q. Okay.      3 And Exhibit 3, it seems like it      4 had two pages stapled together, but they look      5 to just be copies of one another. Is that --      6 I guess the second page has remittance      7 instructions.      8 Is that the only difference?      9 A. I'm looking at this with you,      10 in some sense. I didn't issue this. It      11 looks to me like that's correct. I don't      12 know if there's another reason to be two      13 pages on this.      14 Q. Okay. Would you have reviewed      15 Exhibit 3 before it was sent out?      16 A. No, not specifically.      17 Q. Okay. Let's look at Exhibit 4      18 for a moment. And Exhibit 4 is the      19 analysis -- the invoice for services in      20 support of you in connection with preparation      21 of your expert report.      22 So services by Analysis Group      23 in support of you; correct?      24 A. Yes, that's what it looks like</p>
<p>1 A. I would hope that it would,      2 yes.</p> <p>3 Q. Okay. To your knowledge, it      4 does; correct?</p> <p>5 A. To my knowledge, it does.</p> <p>6 Q. Okay.</p> <p>7 Do you know if the Exhibit 3      8 invoice has been paid?</p> <p>9 A. I don't believe it's been paid.</p> <p>10 Q. Okay. Is there -- are there      11 payment terms that you're aware of?</p> <p>12 MR. BREWER: Objection, form.</p> <p>13 THE WITNESS: I imagine there      14 are in the retention letter, but I      15 can't recall them at the moment.</p> <p>16 Q. (BY MR. GOTTO) Okay. Do you      17 recall any particular agreement regarding      18 deferral of payment for a period of time, or      19 anything along those lines?</p> <p>20 A. No, I don't recall any      21 agreement like that.</p> <p>22 Q. So would you generally expect      23 this invoice to be paid in the ordinary      24 course of business?</p>	<p>1 to me.      2 Q. Okay. Can you tell me who at      3 Analysis Group provided support to you in      4 your work here?      5 A. So I worked specifically with a      6 fellow named Steve Cacciola, who was my point      7 of contact. I understand that he supervised      8 a larger team of people.      9 Q. And I'm sorry, the spelling on      10 his name? Do you recall?      11 A. C-A-C-C-I-O-L-A is his last      12 name. First name is Stephen. And that would      13 be S-T-E-P-H-E-N, if I have it correct.      14 Q. And he supervised a group of      15 other folks at Analysis Group?      16 A. Yes.      17 Q. And do you know the names of      18 any of those other people?      19 A. A couple of them come to mind.      20 One is Federico Mantovanelli.      21 And the second was Lucia Antos,      22 I believe. Goodness. I hope I have      23 everybody's name correct.      24 Q. And Ms. Antos, the spelling on</p>
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<p style="text-align: right;">Page 18</p> <p>1 that last name? Or approximation?</p> <p>2 A. I'm going to say A-N-T-O-S,</p> <p>3 with my apologies to her if I have misspelled</p> <p>4 her name.</p> <p>5 Q. Okay.</p> <p>6 And I understand you indicated</p> <p>7 that Mr. Cacciola was your principal point of</p> <p>8 contact.</p> <p>9 Did you also have direct</p> <p>10 contact with either Mr. Mantovanelli or</p> <p>11 Ms. Antos?</p> <p>12 A. Not that I recall.</p> <p>13 Q. Okay. Any other direct contact</p> <p>14 with Analysis Group personnel that you can</p> <p>15 recall?</p> <p>16 A. No.</p> <p>17 Q. Do you know what Mr. Cacciola's</p> <p>18 background is?</p> <p>19 A. I believe he has training in</p> <p>20 economics, but I'm not sure, no.</p> <p>21 Q. Okay. So you're not familiar</p> <p>22 with -- does he hold a Ph.D., for example, do</p> <p>23 you know?</p> <p>24 A. I believe, yes.</p>	<p style="text-align: right;">Page 20</p> <p>1 later on, so maybe you can identify that for</p> <p>2 us when we're actually looking at your CV and</p> <p>3 your prior testimony.</p> <p>4 So apart from that one other</p> <p>5 engagement, any other background with</p> <p>6 Mr. Mantovanelli?</p> <p>7 A. I don't believe so.</p> <p>8 Q. How about Ms. Antos? What's</p> <p>9 her area of expertise?</p> <p>10 A. I believe also economics.</p> <p>11 Q. Does she hold a Ph.D.?</p> <p>12 A. That, I don't know.</p> <p>13 Q. Have you worked with her in any</p> <p>14 other engagement?</p> <p>15 A. No.</p> <p>16 Q. I believe you indicated that</p> <p>17 those three individuals are the ones whose</p> <p>18 names you can recall from Analysis Group at</p> <p>19 this point.</p> <p>20 Were there other people that</p> <p>21 you understood to be working on this support</p> <p>22 engagement?</p> <p>23 A. It would only be in the general</p> <p>24 sense. I worked with Steve, and I understood</p>
<p style="text-align: right;">Page 19</p> <p>1 Q. Okay. And is there any</p> <p>2 particular area of economics that he has</p> <p>3 expertise in, to your knowledge?</p> <p>4 A. I did not investigate that.</p> <p>5 Q. Have you worked with</p> <p>6 Mr. Cacciola other than this engagement?</p> <p>7 A. No, I don't believe so.</p> <p>8 Q. Okay. How about</p> <p>9 Mr. Mantovanelli, do you know what his area</p> <p>10 of expertise is?</p> <p>11 A. Again, he's a -- he works in</p> <p>12 economics. He has training in economics.</p> <p>13 Q. Okay. Does he have a Ph.D., do</p> <p>14 you know?</p> <p>15 A. I believe, yes.</p> <p>16 Q. Have you worked with him in any</p> <p>17 other engagement?</p> <p>18 A. Yes. One previous engagement.</p> <p>19 Q. What was that?</p> <p>20 A. That was a matter involving --</p> <p>21 it's listed in my --</p> <p>22 Q. One of the ones listed?</p> <p>23 A. Yes.</p> <p>24 Q. We'll turn to those a little</p>	<p style="text-align: right;">Page 21</p> <p>1 that he had a team of people working on this.</p> <p>2 So I might infer that there were, but I don't</p> <p>3 know any specifics.</p> <p>4 Q. Okay. So, let me just back up</p> <p>5 for one second.</p> <p>6 The Exhibit 4 invoice indicates</p> <p>7 495.9 professional hours and \$251,741 of</p> <p>8 billing.</p> <p>9 Do you know what hourly rates</p> <p>10 or rate or rates were employed in deriving</p> <p>11 the dollar billing from those number of</p> <p>12 hours?</p> <p>13 A. No, I don't.</p> <p>14 Q. Do you know if there were</p> <p>15 different rates applied for different</p> <p>16 Analysis Group personnel?</p> <p>17 A. No.</p> <p>18 Q. Do you know if this -- if the</p> <p>19 Exhibit 4 invoice has been paid?</p> <p>20 A. No. This invoice is not</p> <p>21 something that I have any real awareness of</p> <p>22 other than I'm just seeing it really today.</p> <p>23 Q. Okay. Any reason to think the</p> <p>24 terms of payment are other than the ordinary</p>

<p style="text-align: right;">Page 22</p> <p>1 course of business?</p> <p>2 A. No reason to think that, or no</p> <p>3 knowledge of any aspects of that.</p> <p>4 Q. The Exhibit 4 invoice appears</p> <p>5 to be for services performed during the month</p> <p>6 of April. Do you know if there is an</p> <p>7 additional Analysis Group invoice for</p> <p>8 services performed in the month of May?</p> <p>9 A. I don't know.</p> <p>10 Q. Did Analysis Group, to your</p> <p>11 knowledge, perform support services in</p> <p>12 connection with your work during the month of</p> <p>13 May?</p> <p>14 A. Yes, they did.</p> <p>15 Q. Do you have -- in terms of the</p> <p>16 magnitude of the amount of work that they</p> <p>17 did, Do you have a sense of whether it was</p> <p>18 greater or lesser than the amount of work</p> <p>19 they did in the month of April?</p> <p>20 A. That would be hard for me to</p> <p>21 make an estimate of. I gave them</p> <p>22 instructions and asked for their support in</p> <p>23 April and in May. I couldn't tell you if</p> <p>24 they were doing more or less work off the top</p>	<p style="text-align: right;">Page 24</p> <p>1 A. Other than answering questions</p> <p>2 that I had to familiarize myself -- or to</p> <p>3 refamiliarize myself with aspects of the</p> <p>4 work, I don't believe so.</p> <p>5 Q. And what areas did you ask --</p> <p>6 did you speak with them about to</p> <p>7 refamiliarize yourself with --</p> <p>8 MR. BREWER: And I'm going to</p> <p>9 let you answer the question, but just</p> <p>10 give you the caution that to the</p> <p>11 extent your response would disclose</p> <p>12 any substance of conversation with</p> <p>13 counsel, I'd ask you not to include</p> <p>14 that in your response.</p> <p>15 Q. (BY MR. GOTTO) Let me see if I</p> <p>16 can ask the question a little bit differently</p> <p>17 and maybe address counsel's concern.</p> <p>18 Just in terms of the subject</p> <p>19 matter, you indicated there were some areas</p> <p>20 you had some discussions to refamiliarize</p> <p>21 yourself with matters in the report. Just in</p> <p>22 terms -- at the level of just subject matter,</p> <p>23 do you recall what those were?</p> <p>24 MR. BREWER: Same instruction.</p>
<p style="text-align: right;">Page 23</p> <p>1 of my head right now.</p> <p>2 Q. Okay. Your report is dated</p> <p>3 May 10th.</p> <p>4 A. Yes.</p> <p>5 Q. So do you know if they did any</p> <p>6 work after May 10th?</p> <p>7 A. You know, I spoke with Steve</p> <p>8 after May 10th to review a couple of aspects</p> <p>9 of my work. So there may be bits, but I</p> <p>10 don't know.</p> <p>11 Q. Okay. Fair to say that you</p> <p>12 would expect that the substance of their --</p> <p>13 the bulk of their work was done prior to --</p> <p>14 on or before May 10th?</p> <p>15 A. If I had to make an estimate,</p> <p>16 that would be my estimate, but I don't know</p> <p>17 their -- their -- I'm retained separately</p> <p>18 from them, and they provide services to me to</p> <p>19 help me; but I don't really keep track of or</p> <p>20 know anything about the timing or specifics</p> <p>21 of their activity.</p> <p>22 Q. Okay. Any services that they</p> <p>23 performed at your request in preparation for</p> <p>24 today's deposition?</p>	<p style="text-align: right;">Page 25</p> <p>1 THE WITNESS: So as I was</p> <p>2 reviewing the report, I wanted to just</p> <p>3 go back over some of the analyses that</p> <p>4 I conducted and the empirical work and</p> <p>5 walk through the specific conduct of</p> <p>6 those and make sure I was completely</p> <p>7 familiar and recalling everything</p> <p>8 correctly. So that was the main</p> <p>9 issue.</p> <p>10 Q. (BY MR. GOTTO) Okay.</p> <p>11 When were you first contacted</p> <p>12 regarding potential expert work in connection</p> <p>13 with the opioids litigation?</p> <p>14 A. It would be late March, I</p> <p>15 believe. Maybe middle of March this year.</p> <p>16 It's hard for me to recall the date</p> <p>17 specifically.</p> <p>18 Q. And by whom were you contacted?</p> <p>19 A. The first contact was from</p> <p>20 Analysis Group indicating that the counsel</p> <p>21 was looking for an expert. And subsequent to</p> <p>22 that, the substantive discussions were</p> <p>23 between me and counsel.</p> <p>24 Q. Okay. So that first Analysis</p>

<p style="text-align: right;">Page 26</p> <p>1 Group contact, was that from Mr. Cacciola?</p> <p>2 A. I don't recall. It may have</p> <p>3 been. That would make sense to me.</p> <p>4 Sometimes the initial contacts come from</p> <p>5 other people there, so I -- I don't recall at</p> <p>6 the moment.</p> <p>7 Q. Okay. In any event, it was</p> <p>8 someone in the Analysis Group that you had</p> <p>9 had prior contact with?</p> <p>10 A. Yes. Well, it was someone from</p> <p>11 Analysis Group. If it was Steve, I wouldn't</p> <p>12 have had prior contact with him at that</p> <p>13 point. But it would have been someone from</p> <p>14 Analysis Group.</p> <p>15 Q. Okay. And so when you were</p> <p>16 initially contacted, what was your</p> <p>17 understanding of the nature of the potential</p> <p>18 engagement?</p> <p>19 A. That there was counsel here for</p> <p>20 one of the defendants in this matter that was</p> <p>21 interested in talking with potential Experts.</p> <p>22 And I believe I was informed of the general</p> <p>23 matter, but it's also a matter that I had</p> <p>24 noted in the press, for example.</p>	<p style="text-align: right;">Page 28</p> <p>1 A. I was not made aware of</p> <p>2 anything like that.</p> <p>3 Q. In your own mind, is there any</p> <p>4 particular item in your professional</p> <p>5 experience that was particularly germane to</p> <p>6 what you understood to be the engagement?</p> <p>7 MR. BREWER: Objection, vague.</p> <p>8 MR. GOTTO: Let me break it</p> <p>9 down a little bit.</p> <p>10 THE WITNESS: Okay.</p> <p>11 Q. (BY MR. GOTTO) In your CV you</p> <p>12 list many publications, for example, that</p> <p>13 you've authored or coauthored in your career.</p> <p>14 Were any of those publications -- did you</p> <p>15 have an understanding as to whether any of</p> <p>16 those publications were of particular</p> <p>17 pertinence to any aspect of the litigation as</p> <p>18 to which your testimony would be of interest?</p> <p>19 A. So if we're talking about at</p> <p>20 the time of the initial contact.</p> <p>21 Q. Yes.</p> <p>22 A. I was not made aware of</p> <p>23 anything in particular. It was simply a</p> <p>24 matter of reaching out to me, informing me</p>
<p style="text-align: right;">Page 27</p> <p>1 So I had the general</p> <p>2 understanding from that and then the</p> <p>3 understanding that counsel was interested in</p> <p>4 talking to potential Experts.</p> <p>5 Q. Did you have any understanding</p> <p>6 as to who any of the plaintiffs' experts were</p> <p>7 at that point of the initial conversation?</p> <p>8 A. No.</p> <p>9 Q. Did you have any understanding</p> <p>10 as to any particular aspect of the opioids</p> <p>11 litigation where your testimony could be</p> <p>12 used?</p> <p>13 A. No.</p> <p>14 Q. Did you have an understanding</p> <p>15 as to why the person at Analysis Group had</p> <p>16 contacted you about this potential</p> <p>17 engagement?</p> <p>18 A. I do work at health economics,</p> <p>19 and I understood that they were looking --</p> <p>20 that there was an interest in talking to</p> <p>21 people who had expertise in health economics.</p> <p>22 Q. Okay. Any particular item in</p> <p>23 your background that you understood to be of</p> <p>24 particular significance?</p>	<p style="text-align: right;">Page 29</p> <p>1 that counsel was interested in talking to</p> <p>2 people that -- who might be willing to be</p> <p>3 expert -- offer expert opinions in this</p> <p>4 matter and would I be interested in talking</p> <p>5 to counsel.</p> <p>6 So no specifics about my</p> <p>7 background were indicated to me at that time.</p> <p>8 It was a fairly general inquiry.</p> <p>9 Q. Okay. And in terms of in your</p> <p>10 own mind, though -- understanding that</p> <p>11 nothing was necessarily communicated to you,</p> <p>12 but in terms of your own mind, was there</p> <p>13 anything in your background that you felt</p> <p>14 would be of particular pertinence to what you</p> <p>15 understood to be the nature of the testimony</p> <p>16 that would be sought from you?</p> <p>17 A. Well, I would have to be using</p> <p>18 my imagination at this time to go back. I'm</p> <p>19 a health economist. You can see in my CV</p> <p>20 some work related to opioids. Perhaps that</p> <p>21 had something to do with it. I didn't spend</p> <p>22 a lot of time thinking about that at the</p> <p>23 time.</p> <p>24 Q. Okay. So, for example,</p>

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<p>1 Exhibit 2, I think we marked it as it's a      2 working paper that you are a coauthor that      3 relates to opioids; correct?      4 A. Yes. I believe that's correct.      5 Q. And I guess what I'm getting      6 at, in terms of whether there was a      7 communication or just in your own mind, this      8 isn't a situation where there -- for example,      9 there is a paper you published in 2015 that      10 addresses a specific issue that we're      11 anticipating needing or wanting your      12 testimony on. There's no kind of      13 conversation or thought process along those      14 lines; is that fair?      15 A. That was my sense at the time,      16 I believe.      17 Q. Okay. So more your general      18 background and professional experience was      19 what was of interest in terms of contacting      20 you about this particular engagement? At      21 least that was your understanding?      22 A. Yes. The last part was      23 important. To the extent I had any      24 understanding or even thought about it, which</p>	<p>1 A. Were any or are any.      2 Q. And did you understand from the      3 initial conversation that the client of the      4 counsel that was interested in potentially      5 retaining you was representing Walgreens?      6 MR. BREWER: I'm going to give      7 you just the same caution about      8 responding about the substance of any      9 conversation with counsel.      10 You can answer.      11 THE WITNESS: So that would      12 have come out pretty early on. I      13 can't recall if that was in the      14 initial contact or if that was pretty      15 immediate in the initial conversation      16 with counsel.      17 Q. (BY MR. GOTTO) Okay. And have      18 you ever in your career been retained by      19 Walgreens for any purpose?      20 A. No.      21 Q. And my understanding from      22 reading your report, and ask you to confirm      23 if this is accurate, is that the client of      24 counsel that has retained you in this matter</p>
<p style="text-align: center;">Page 31</p> <p>1 I'm not sure I did at the time, that would be      2 the kind of thing that I would perhaps now in      3 retrospect think would have been it. But I      4 don't remember reflecting on that at the time      5 at all.      6 Q. Okay. When you were originally      7 contacted, were you given any information in      8 order to assess whether there would be a      9 conflict or some other circumstance that      10 would make it inappropriate for you to be      11 retained in this matter?      12 MR. BREWER: Objection to form.      13 THE WITNESS: So, yes, early      14 on. And I can't recall if that was in      15 the transition to the conversation      16 with the counsel or as an initial step      17 in that conversation, but yes, I did      18 assess whether there were any      19 conflicts that could be an issue.      20 Q. (BY MR. GOTTO) Okay. And I      21 take it there were none?      22 A. I -- no, I don't think there      23 are any.      24 Q. Okay.</p>	<p style="text-align: center;">Page 33</p> <p>1 is Walgreens; correct?      2 A. That's my understanding.      3 Q. Okay. And so is it your      4 understanding that your opinions in this      5 matter are being offered on behalf of any      6 defendant other than Walgreens?      7 A. So I've been retained by      8 Walgreens -- or by counsel associated with      9 Walgreens. That was the focus of my report.      10 You would see one part of my report I do say      11 that I have been informed that my testimony      12 could be offered -- at trial could be offered      13 by Walgreens or by other defendants. So I do      14 understand that to be the case.      15 Q. Okay. In preparing your      16 report, have you reviewed any documents      17 produced by defendants other than Walgreens?      18 MR. BREWER: Objection, form.      19 THE WITNESS: I don't believe      20 so. We could go back and look through      21 my materials if we wanted to make an      22 itemized list of that, but I don't      23 believe so.      24 Q. (BY MR. GOTTO) So after the</p>

<p style="text-align: right;">Page 34</p> <p>1 initial contact with the Analysis Group, you      2 indicated then there was a contact with      3 counsel.      4 With whom did you have that      5 conversation with counsel?      6 A. That was with Mr. Brewer.      7 Q. Okay. And I don't want you to      8 divulge the substance of any of the      9 communications you've had with Mr. Brewer or      10 anyone else at his firm. Apart from      11 Mr. Brewer and his colleagues at his firm,      12 have you had conversations with any other      13 persons other than at Analysis Group in      14 connection with the preparation of your      15 report?      16 A. No.      17 Q. Have you had occasion to speak      18 with any other person who has submitted an      19 expert report in this litigation with respect      20 to the litigation or any of the issues in the      21 litigation?      22 A. No.      23 Q. Are you aware that Daniel      24 Kessler has submitted an expert report?</p>	<p style="text-align: right;">Page 36</p> <p>1 from what you understood to be the potential      2 scope of the assignment from your initial      3 contact by Analysis Group?      4 MR. BREWER: Objection to form.      5 THE WITNESS: I don't think it      6 was different. I think the -- my      7 initial understanding was fairly      8 broad, that this -- there were defense      9 counsel in this matter that were      10 looking for health economists or a      11 health economist to opine on matters      12 related -- health economic matters      13 related to the issues. So I did not      14 have a specific sense at the initial      15 contact of what it was, and so I'd say      16 it falls within what I might have      17 thought at the time would be the scope      18 of the engagement.      19 Q. (BY MR. GOTTO) Okay. So fair      20 to say that there -- there wasn't a point at      21 which there was a subject matter that had      22 been identified to you as a potential area      23 for your testimony that was then taken off      24 the table?</p>
<p style="text-align: right;">Page 35</p> <p>1 A. Yes.      2 Q. And you know Professor Kessler?      3 A. Yes.      4 Q. And you've coauthored several      5 papers with him; correct?      6 A. That's correct.      7 Q. Okay. But you've had no      8 conversations with him with respect to any      9 aspect of this litigation, is that fair?      10 A. Yes.      11 Q. Okay. Have you previously been      12 retained by Mr. Brewer or anyone at his firm?      13 A. No.      14 Q. And I know you indicated      15 already that you have not previously been      16 retained by Walgreens.      17 Have you previously been      18 retained for any purpose by any of the other      19 defendants in this litigation?      20 A. No. I don't believe so.      21 Q. In your report, you describe      22 the scope of your assignment. And did -- did      23 the scope of your assignment as reported in      24 your report, was that in any way different</p>	<p style="text-align: right;">Page 37</p> <p>1 A. No. Certainly not.      2 Q. And did you understand from the      3 initial contact that it was anticipated that      4 there would be one or more expert reports      5 submitted by plaintiffs that you would be      6 requested to review and comment on?      7 MR. BREWER: I'm going to just      8 lodge an objection. Because the      9 questions are increasingly getting      10 closer to substance of discussions      11 with counsel. So you can answer this,      12 but that is my objection.      13 MR. GOTTO: Okay. And again,      14 this is the Analysis Group initial      15 contact that I'm asking you about.      16 THE WITNESS: Oh, the Analysis      17 Group initial contact, I don't recall      18 whether there was -- there were      19 specifics about responding to expert      20 reports. There could have been.      21 Q. (BY MR. GOTTO) Okay. In your      22 own mind, did you anticipate that as being      23 one of the potential aspects of the      24 assignment?</p>

<p>1       A. I'm used to that being part of      2 these matters. So to the extent that I would      3 have thought about it, I suppose I would have      4 imagined that.</p> <p>5       Q. Have you had occasion to review      6 any of the complaints filed by any of the      7 plaintiffs in the opioid litigation?</p> <p>8       A. Yes. There are two complaints.      9 Second amended complaint from Cuyahoga County      10 and the second amended complaint from Summit      11 County, if I recall correctly.</p> <p>12       If we want to get specific, I      13 should probably refer to the list to make      14 sure I caption those or quote those      15 correctly.</p> <p>16       Q. Let's turn to Exhibit 6 for a      17 moment, which is the corrections page. And      18 perhaps the best way to -- well, just give me      19 a moment. I'm just looking at this for the      20 first time myself.</p> <p>21       The correction on paragraph 45,      22 is it simply striking the words "one court or      23 two"?</p> <p>24       A. Yes.</p>	<p>Page 38</p> <p>1 presenting my testimony that I would want to      2 undertake. I also would say that in my      3 report I note that if additional material      4 becomes available or additional opinions are      5 offered or new information relevant to my      6 report becomes available, that I would want      7 to reserve the opportunity to take a look at      8 that and possibly do additional work or      9 extend or revise my opinions. So it's      10 possible that that would come along, and I      11 want to have the ability to do that.</p> <p>12       Q. Okay. But in terms of as we      13 sit here today and additional work that      14 you're actually anticipating performing as we      15 sit here today, other than reviewing the      16 report you've already submitted so that it      17 would be fresh in your mind when you testify      18 at trial, is there any other work, again, as      19 we sit here today, that you have in mind that      20 you would do before trial?</p> <p>21       MR. BREWER: Asked and      22 answered.</p> <p>23       THE WITNESS: So as we sit here      24 today, the things that I can imagine</p>	<p>Page 40</p>
<p>1       Q. Okay. And the correction in      2 paragraph 122 simply inserting the word "two"      3 in the first line?</p> <p>4       A. Yes.</p> <p>5       Q. And then the correction in      6 paragraph 18 is simply including the      7 underlined sentence at the end?</p> <p>8       A. Yes.</p> <p>9       Q. Okay. Great. Then perhaps we      10 can get back into that then when we're      11 actually going through your report.</p> <p>12       Are you aware that there's      13 trial dates scheduled in this matter in      14 October of this year?</p> <p>15       A. Yes. I think I'm aware of      16 that.</p> <p>17       Q. Do you anticipate performing      18 any additional services in connection with      19 testimony in this matter prior to the trial      20 other than reviewing the report to refresh      21 yourself on what you said in the report?</p> <p>22       A. Oh, I suppose it depends on the      23 circumstances. It may be appropriate to      24 prepare other exhibits or prepare ways of</p>	<p>Page 39</p> <p>1 were, as I said before, possibly      2 preparing additional exhibits or      3 demonstratives or working on ways to      4 effectively or suitably present my      5 opinions at trial, so that that could      6 be additional work.</p> <p>7       And then I suppose your      8 question asked me to avoid this, but      9 to the extent other material becomes      10 available, I would revise or extend my      11 opinion.</p> <p>12       Q. (BY MR. GOTTO) Are there any      13 particular demonstratives you have in mind      14 that you are anticipating putting together      15 for trial?</p> <p>16       A. I have not given thought to      17 that at this point.</p> <p>18       Q. Fair to say, though, that      19 there's no additional analysis or research      20 that you, at least as we sit here today, have      21 in mind to perform prior to testifying at      22 trial?</p> <p>23       MR. BREWER: Asked and      24 answered.</p>	<p>Page 41</p>

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<p>1           THE WITNESS: As we sit here      2 today, the kinds of things that would      3 lead me to do additional analyses      4 would be the arrival of new      5 information or other opinions in this      6 matter that would be relevant to mine.      7 So I haven't anticipated it right now,      8 but it could happen.</p> <p>9       Q. (BY MR. GOTTO) Okay.</p> <p>10      As you sit here today, are you      11 anticipating testifying at trial?</p> <p>12      A. If I'm asked to.</p> <p>13      Q. Your \$875-an-hour rate, do you      14 have any different billing rate for      15 deposition or trial testimony?</p> <p>16      A. No.</p> <p>17      Q. And how did you arrive at the      18 \$875 rate?</p> <p>19      A. That's my rate. That's the      20 rate I decided to charge.</p> <p>21      Q. How long have you used that      22 rate?</p> <p>23      A. That rate has -- I've used that      24 rate for material -- I've used that rate for</p>	<p>1 amount?</p> <p>2       A. So there I have to be a little      3 bit careful because in their internal      4 accounting they may or may not count all of      5 that. And I don't know what all of those      6 details are and how they arrive at the base      7 number. But my understanding is I would be      8 generally associated with that number.</p> <p>9       Q. Okay. Is that an arrangement      10 you negotiated with Analysis Group?</p> <p>11      A. It was arrived at in      12 conversation with them. I don't know how      13 you'd characterize negotiation particularly,      14 but they offered that arrangement to me.</p> <p>15      Q. Okay. So not a situation where      16 they offered less and you asked for more and      17 people arrived at a middle ground?</p> <p>18      A. Not really, no.</p> <p>19      Q. And has that arrangement been      20 in place in the prior engagements you had      21 where Analysis Group provided support?</p> <p>22      A. Oh, that is a recent      23 arrangement.</p> <p>24      Q. And so has that arrangement</p>
<p>1           matters that began this year.</p> <p>2       Q. Okay. And I think you indicate      3 in your report that you received some      4 compensation for -- with respect to amounts      5 that are paid by Analysis Group; is that      6 correct?</p> <p>7       MR. BREWER: Objection, form.</p> <p>8       THE WITNESS: So what I      9 indicate in my report is that I      10 received some compensation that is      11 based on billings, Analysis Group      12 billings or receipts in matters in      13 which they support me.</p> <p>14      Q. (BY MR. GOTTO) Okay. And so      15 what is -- what are the details of your      16 arrangement with Analysis Group on that?</p> <p>17      A. I believe that I get eventually      18 seven and a half percent of some measure of      19 their receipts from matters in which they      20 support me.</p> <p>21      Q. Okay. So, for example,      22 Exhibit 4, the April invoice, which shows a      23 251,000-and-change amount, would you expect      24 to receive seven and a half percent of that</p>	<p>1           been in place for any engagement prior to      2 this one?</p> <p>3       A. No.</p> <p>4       Q. Did you have any arrangement      5 for prior engagements where Analysis Group      6 was involved? Did you have any arrangement      7 in place where you received any compensation      8 with respect to their receipts?</p> <p>9       A. So I've worked with Analysis      10 Group for a long time, and a number of years      11 ago there was an arrangement like that in      12 place and then it lapsed. And I didn't say      13 anything about it. And then fairly recently      14 they noticed that it had lapsed, and they      15 called that to my attention and they      16 reinstated it. So, yes, but it would go back      17 a few years.</p> <p>18      Q. Okay. So what is Analysis      19 Group?</p> <p>20      A. They're a litigation support      21 consulting firm.</p> <p>22      Q. Do they have particular areas      23 of expertise, to your knowledge?</p> <p>24      A. I know they have people who</p>

<p style="text-align: right;">Page 46</p> <p>1 work on health economics, and I work with 2 them in that area. 3 If I look at their website, I 4 can recall they list other areas as well. 5 They do a lot of different kinds of economic 6 work, as I understand it. 7 Q. Okay. Your experience with 8 them, though, has that been limited to health 9 economics? 10 A. Yes. 11 Q. And when did you first work 12 with them? 13 A. That would go back quite a 14 while, to the 1990s. 15 Q. And what were the 16 circumstances? Did they contact you? Did 17 you contact them? 18 How did that come to be? 19 A. That was a long time ago. I -- 20 as I recall now in the fuzzy way of 20- or 21 30-year-old conversations, they must have 22 contacted me with a matter and asked if I was 23 interested. And that would have started the 24 conversation with them.</p>	<p style="text-align: right;">Page 48</p> <p>1 from Analysis Group? 2 A. Oh, in a number of areas as I 3 was working on the report: gathering 4 relevant materials, conducting analyses, 5 preparing exhibits, collecting information to 6 make the points that I wanted to make. 7 I asked for support in numerous 8 areas. It was a big job. 9 Q. Are there any particular 10 analyses you can recall requesting Analysis 11 Group to perform? 12 MR. BREWER: I'm going to just 13 object on the lines that these 14 questions are starting to get into 15 drafting of his expert report, which 16 is protected under the federal rules. 17 I'll allow him to answer 18 because I understand -- I'll allow him 19 to answer to a point because I 20 understand in this case we've gotten 21 rulings that have permitted some 22 questioning, but I am going to lodge 23 the objection. 24 MR. GOTTO: Okay. And let me</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Okay. So for this engagement, 2 if we look at Exhibits 3 and 4, you have 3 approximately 75 professional hours through 4 the end of May and the Analysis Group has 5 just slightly under 500 professional hours 6 for the month of April. 7 How is the work divided between 8 yourself and Analysis Group that is reflected 9 in those professional hours? 10 A. So the way that I wrote the 11 report was that I came up with a plan, a game 12 plan, if you will. And I sat down with Steve 13 or talked to Steve on the phone and informed 14 him or let him know the areas in which I was 15 hoping to get support from Analysis Group. 16 And we came up with a plan of attack and 17 worked through it. 18 So as I was writing the report, 19 they were providing me with materials at my 20 request. And, you know, we went through the 21 report in that way. So that is what led to 22 these hours. 23 Q. Okay. And so what were the 24 areas in which you were hoping to get support</p>	<p style="text-align: right;">Page 49</p> <p>1 just clarify what I'm interested in, 2 and perhaps this addresses some of 3 counsel's concern. 4 Q. (BY MR. GOTTO) I just want to 5 know the individuals who actually performed 6 the work that ultimately is reflected in your 7 report. 8 So if there's -- if there's a 9 piece of analysis that you thought, I'd like 10 to -- I'd like this analysis done, but I'm 11 not going to do it myself. I'd like someone 12 at Analysis Group to do this analysis and 13 then report back to me the results. That's 14 what I'm asking about, if there's things that 15 are in that category. 16 A. So my interaction with them was 17 nearly always that I would communicate with 18 Steve and I would indicate areas in which I 19 wanted their support. And that might have -- 20 that would have included, for example, the -- 21 a statistical analysis. 22 And then he would work with the 23 team to conduct that, and then I would get 24 results back through him.</p>

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<p>1        So, you know, throughout the      2 report there was that sort of interaction,      3 where I would ask for support in the area.      4 He would see to it that it was conducted. I      5 would review the materials coming back.</p> <p>6        But I was not aware of or      7 directing the specific personnel who would      8 have worked on a particular piece of      9 analysis.</p> <p>10      Q. Okay. Yeah, and I -- I wasn't      11 necessarily asking for individuals' names. I      12 was just trying to get an understanding of      13 aspects of your report that reflect analysis      14 that you personally conducted as compared to      15 analysis that you requested someone at      16 Analysis Group conduct.</p> <p>17      A. Oh, I would say these are my      18 analyses. I gave instructions for how I      19 wanted them done. I saw the results along      20 the way. And I view them as my work.</p> <p>21      I asked for support to get the      22 specifics taken care of, but they're analyses      23 that I directed and then I received and      24 reviewed.</p>	<p>1        Q. And the Cutler report?</p> <p>2        A. Yes.</p> <p>3        Q. Now, you indicated that you had      4 a conversation with Mr. Cacciola about -- I      5 think your term was plan of attack for the      6 engagement. You had not previously worked      7 with him; correct?</p> <p>8        A. That's correct.</p> <p>9        Q. Okay. So when you make      10 reference to plan of attack, what did you      11 communicate to Mr. Cacciola?</p> <p>12      A. So as we were getting started,      13 I had looked at some of the reports and some      14 of the -- well, I looked at the complaints      15 and -- I'm trying to recall the specific      16 timing. I think we had done some looking at      17 pieces before the plaintiffs' reports were      18 filed. So in that space, some initial      19 conversations about things I was interested      20 in, but then once the plaintiffs' experts      21 were filed and I had reviewed them, a much      22 more specific set of points that I wanted to      23 make, a set of analyses that I wanted to      24 investigate. And we worked through, looked</p>
<p>1        Q. Okay. You comment in your      2 report, in some detail, on a number of the      3 reports submitted by plaintiffs' experts;      4 correct?</p> <p>5        A. Yes.</p> <p>6        Q. And fair to say you personally      7 reviewed each one of those reports that you      8 comment on?</p> <p>9        A. Yes.</p> <p>10      Well, yes. The ones I comment      11 on, I would say there are -- there was a      12 report that I refer only in a footnote to,      13 for example, and those I reviewed parts of      14 but would have reviewed more quickly and in      15 less depth than the reports that I comment      16 on.</p> <p>17      Q. Okay. But for example, the      18 McCann report, you've reviewed personally?</p> <p>19      A. Yes.</p> <p>20      Q. And the McGuire report?</p> <p>21      A. There are two, but yes.</p> <p>22      Q. And -- thank you.</p> <p>23      And the Gruber report?</p> <p>24      A. Yes.</p>	<p>1        at those steps. And I asked him to help with      2 those. And then he would have worked out a      3 plan to conduct the work that I had asked      4 for.</p> <p>5        Q. In the course of your      6 engagement, have you been provided with any      7 assumptions that you were to make in forming      8 any of your opinions?</p> <p>9        A. It is a little hard for me to      10 know what you mean by assumptions, but I      11 would say no. I wasn't given anything called      12 an assumption, or really an assumption by      13 counsel, and I can't recall at this point      14 making assumptions that would be important      15 factors in the analysis or in the results.</p> <p>16      Q. Okay. Were there any summaries      17 of facts that you were provided and      18 instructed to assume to be true for purposes      19 of your report?</p> <p>20      A. No.</p> <p>21      Q. As your work on the engagement      22 progressed -- well, strike that.</p> <p>23                  I had asked you early on about      24 when you were first contacted, if there were</p>

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<p>1 aspects of your background or experience that      2 you thought to be particularly germane. As      3 your work on the engagement progressed, did      4 you come to view any aspects of your      5 background or experience as particularly      6 germane to the opinions that you were      7 formulating?</p> <p>8 A. I would say I felt somewhat      9 informed by having worked on some papers      10 related to opioids in the past. And so that      11 made me feel familiar with many of the      12 aspects of -- in general that were coming up      13 in this matter. I can recall that.</p> <p>14 Q. Okay. And is one of those      15 papers Exhibit 2?</p> <p>16 A. Yes. That's -- that's correct.</p> <p>17 Q. Okay. And are there others      18 that are listed on your CV?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. Well, we'll -- and we'll      21 turn to those in a little bit.</p> <p>22 Did you maintain a file with      23 respect to this engagement?</p> <p>24 A. No. I mean, I looked at the</p>	<p>1 report that you would provide today if you      2 were -- if you were reissuing this report as      3 of June 6th rather than May 10th?</p> <p>4 A. I don't think so, no. I will      5 note, as we talked about before, I would like      6 to reserve my ability to respond to other      7 material that may come forth in the future.      8 So I'll leave that out there. But as of      9 today, this expresses the opinions that I      10 have in the matter.</p> <p>11 Q. Okay. Let's just look at      12 Exhibit 6 for a moment and paragraph 18,      13 footnote 16 of your report so that we have      14 the context for that change.</p> <p>15 Okay. So in Exhibit 6, you add      16 to the end of footnote 16 a sentence that      17 states: However, in my own work, I have      18 found that a small share of physicians do      19 account for a significant share of opioid      20 prescriptions.</p> <p>21 Did I read that correctly?</p> <p>22 A. Yes.</p> <p>23 Q. And just so we have the full      24 context, in paragraph 18, the first sentence</p>
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<p>1 plaintiffs' expert reports and so -- but I      2 didn't maintain a file of their materials.</p> <p>3 Q. Okay. Anywhere where you      4 maintained any record of notes that you made      5 in the course of formulating your opinions,      6 or outlines, anything of that nature?</p> <p>7 A. No.</p> <p>8 Q. Okay. Let's turn to your      9 report, which we've marked as Exhibit 5.</p> <p>10 First, would you just look at      11 it and confirm for me that that is the report      12 you've prepared and submitted in this matter?</p> <p>13 [Document review.]</p> <p>14 A. Flipping through it a moment,      15 it does look like my report.</p> <p>16 Q. Okay. And does the report      17 contain all of the opinions that you have      18 formulated in connection with this      19 litigation?</p> <p>20 A. Up to this point, it contains      21 the opinions that I've formulated.</p> <p>22 Q. Okay. And apart from      23 Exhibit 6, which had those corrections, are      24 there any corrections or updates to the</p>	<p>1 in the text states: Over time, prescription      2 opioid use, both medically appropriate and      3 nonmedical, increased, and many patients      4 became dependent on opioids.</p> <p>5 Did I read that correctly?</p> <p>6 A. Yes.</p> <p>7 Q. And then in the footnote, in      8 the citation to footnote 16 and in the      9 footnote, the footnote in the -- in Exhibit 5      10 in your report states: Note that according      11 to Plaintiffs' expert Dr. Alexander, only a      12 small proportion of the prescription opioids      13 that entered the general circulation are the      14 result of, quote, bad actors, closed quote,      15 such as, quote, rogue physicians, closed      16 quote, and, quote, Doctor Shoppers, closed      17 quote, and a citation to Dr. Alexander's      18 report; correct?</p> <p>19 A. Yes.</p> <p>20 Q. And so the addition reflected      21 in Exhibit 6 provides some commentary on      22 that -- the existing sentencing in footnote      23 16 of Exhibit 5, referencing your own work      24 and in which you found that a small share of</p>

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<p>1 physicians do account for a significant share      2 of opioid prescriptions. So what is that --      3 your own work that you're referring to in      4 that added sentence?</p> <p>5 A. That would be principally be      6 the NBER working paper and the analysis      7 contained and the literature review contained      8 in that.</p> <p>9 Q. Okay. And what's your reason      10 for including the added sentence in      11 Exhibit 6, including that in footnote 16?</p> <p>12 A. Oh, I had meant to include that      13 reference and to call out the importance of      14 physician prescribing behavior in      15 understanding the changes in prescription      16 opioid use over time.</p> <p>17 I could have sworn I had      18 written that into the report. But when I      19 went back to look at this in the last few      20 days, I found it wasn't there.</p> <p>21 Q. Okay. So just an oversight on      22 your part when you were preparing the initial      23 report?</p> <p>24 A. Yes.</p>	<p>1 from 1994 to the present.      2 The appointment -- the other      3 appointment entries, are you compensated or      4 have you been compensated for any of those      5 appointments?</p> <p>6 A. Not other than as part of my      7 normal compensation from, say, Stanford      8 University, which is primarily associated      9 with my faculty appointment.</p> <p>10 Q. Okay.</p> <p>11 Is any of your research funded      12 in whole or in part by any grants?</p> <p>13 A. Yes.</p> <p>14 Q. And can you describe for me any      15 of your current research that's funded in      16 whole or in part by any grants?</p> <p>17 A. So I have been working on a      18 project related to insurance type and the use      19 of medical services that's funded by a grant      20 from AHRQ, the Agency For Healthcare Research      21 and Quality, a federal government agency.</p> <p>22 I've been working on a project      23 related to medical group practices that is      24 funded by a grant from the National Institute</p>
<p>1 Q. Okay. Is Dr. Alexander's      2 report noted in footnote 16 the plaintiff      3 expert report that you were referring to      4 earlier that you mentioned in a footnote?</p> <p>5 A. Yes, that's a report that I      6 mentioned once, I believe, in a footnote. So      7 it's one that I would say I took a look at      8 but I did not review at the level of depth as      9 the other reports that I'm talking about in      10 this report here.</p> <p>11 Q. And you don't comment on it      12 other than what's in footnote 16; correct?</p> <p>13 A. I don't believe so. That's      14 correct.</p> <p>15 Q. Okay. Let's turn to some of      16 your background information that's in your      17 CV, Appendix A to your report.</p> <p>18 Do you maintain any other CV      19 other than the CV included in Appendix A?</p> <p>20 A. No.</p> <p>21 Q. Under employment history, you      22 list academic appointments starting in August      23 of 1994 to present, and then you list other      24 appointments, various appointments with dates</p>	<p>1 For Healthcare Management.      2 I'm associated with other      3 grant-funded projects, also generally      4 federally funded grants.</p> <p>5 Q. What is the National Institute      6 For Healthcare Management? Is that a      7 governmental agency or private agency?</p> <p>8 A. It's a private entity.</p> <p>9 Q. And do you know what the source      10 of its funding is?</p> <p>11 A. I'm given a grant from them,      12 and so I don't particularly pay attention to      13 that.</p> <p>14 I have a general understanding      15 that they receive some of their support from      16 healthcare plans, large insurance companies.</p> <p>17 Q. So you indicate -- you      18 identified the National Institute For      19 Healthcare Management. Are there any other      20 nongovernment agencies that provide grants      21 that fund any portion of your current      22 research?</p> <p>23 A. I don't think so, no.</p> <p>24 Q. How about in the last five</p>

<p style="text-align: right;">Page 62</p> <p>1 years? Have there -- is there any research      2 that you've conducted in the last five years      3 funded in whole or in part by grants from      4 agencies other than governmental agencies?</p> <p>5 A. I would have to look at the      6 time periods precisely. I've had a grant      7 from the Robert Wood Johnson Foundation in      8 the not-too-distant past, and I've had a      9 grant from the California Health Care      10 Foundation in the not-too-distant past. I'm      11 not sure whether those are within five years.</p> <p>12 Q. Okay.</p> <p>13 A. But then those are      14 nongovernmental foundations.</p> <p>15 Q. And so the Robert Wood Johnson      16 Foundation grant, what was the nature of the      17 research that that's related to?</p> <p>18 A. Usually it's healthcare markets      19 and the performance of healthcare markets.</p> <p>20 Q. And how about the California      21 Health Care Foundation grant? What was the      22 research that that's related to?</p> <p>23 A. Ambulatory surgical centers.</p> <p>24 Q. What's the nature of the</p>	<p style="text-align: right;">Page 64</p> <p>1 position at Stanford; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. You then list a number      4 of public and professional service      5 engagements or positions.</p> <p>6 Are you compensated or have you      7 been compensated for any of those positions?</p> <p>8 A. Let me take a look.</p> <p>9 Q. Sure.</p> <p>10 [Document review.]</p> <p>11 A. So a couple of these I can      12 recall receiving honoraria associated with      13 the role. Most of these, no.</p> <p>14 Q. Okay. Can you identify the      15 ones where you can recall receiving      16 honoraria?</p> <p>17 A. Yes. So, for example, on      18 page A-3, toward the bottom there's a      19 notation as a member of the Research Awards      20 Selection Committee, and then it says for the      21 National Institute of Health Care Management.      22 And then it says Chair, 2009 to      23 the present.      24 As the chair I have received an</p>
<p style="text-align: right;">Page 63</p> <p>1 California Health Care Foundation?</p> <p>2 A. Oh, they're a philanthropy that      3 makes grants.</p> <p>4 Q. Do you understand if they're      5 funded in whole or in part by private      6 industry?</p> <p>7 A. I understand that they have a      8 large endowment that is the source of their      9 funds, the grants they make, but I don't know      10 the past history. If there is an interesting      11 one in that, I don't know of it.</p> <p>12 Q. Okay. How about the Robert      13 Wood Johnson Foundation? Do you know if that      14 foundation is funded in whole or in part by      15 funds from private industry?</p> <p>16 A. Again, I understand that they      17 have a large endowment that they use to make      18 grants, so I don't believe they're funded at      19 the moment by that. I don't know where their      20 endowment might in history have come from.</p> <p>21 Q. On your CV, you -- well, you      22 have a heading Nonacademic Employment,      23 Research Economist. Well, that's back in      24 '93, '94. So I take it that was before your</p>	<p style="text-align: right;">Page 65</p> <p>1 honorarium for that work.</p> <p>2 And then next to that, when I      3 was senior associate editor of Health      4 Services Research, the journal, there was an      5 annual honorarium associated with that      6 position.</p> <p>7 Those are the two that come to      8 mind.</p> <p>9 I'll tell you, I can't recall      10 at the moment -- for example, when you do      11 study sections. So the special member of the      12 HSOD study section, that could have been an      13 honorarium associated with that, but I can't      14 recall at the moment if there was.</p> <p>15 So those are the two that I      16 know that there was some honorarium      17 associated with it.</p> <p>18 Q. Okay. Do you have a      19 recollection of the approximate amount?</p> <p>20 A. I believe the honorarium for      21 the research awards selection committee      22 chair, it has certainly varied over time.      23 Lately it's been \$4,000 a year.</p> <p>24 And then as senior associate</p>

<p style="text-align: right;">Page 66</p> <p>1 editor, I -- that may also have varied over      2 time. But most recently when I was last a      3 senior associate editor, that would have been      4 \$5,000 per year.</p> <p>5 Q. Okay. Let's turn to your prior      6 testimony, which is Appendix B to your      7 report.</p> <p>8 A. Okay.</p> <p>9 Q. And fair to say Appendix B      10 lists all of the expert testimony you've      11 provided since 2015?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And are there any      14 matters in which you -- since 2015 in which      15 you have prepared an expert report that, to      16 your knowledge, was provided to the other      17 side of the litigation, as to which you did      18 not provide testimony?</p> <p>19 A. There are other matters in      20 which I know I prepared an expert report. I      21 don't know whether it was always provided to      22 the other side in the litigation.</p> <p>23 Q. Okay. So since 2015, you have      24 had expert engagements, litigation-related</p>	<p style="text-align: right;">Page 68</p> <p>1 prices and trends and prices over time.      2 Q. Okay. And do you recall the      3 law firm that retained you in that matter?      4 A. Oh, I am terrible at recalling      5 all of the law firms. So I don't right now.      6 I -- no.</p> <p>7 Q. Okay.</p> <p>8 A. I shouldn't try to guess at it.      9 Q. Do you recall the names of any      10 of the lawyers that were at the firm that      11 retained you?</p> <p>12 A. I wish I were better at      13 remembering those names, but no,      14 unfortunately.</p> <p>15 Q. In addition to the trial      16 testimony, did you also give a deposition in      17 that matter?</p> <p>18 A. No. There was no deposition in      19 that matter.</p> <p>20 Q. Did you prepare a report?</p> <p>21 A. Yes.</p> <p>22 Q. Were you cross-examined at      23 trial?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 67</p> <p>1 expert engagements other than those listed on      2 Appendix B.</p> <p>3 Is that fair?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Do you have any estimate      6 as to the approximate number of such      7 engagements?</p> <p>8 A. As I sit here today, I would      9 have to think it over. Five would be an      10 estimate.</p> <p>11 Q. Okay. Okay. Let's go through      12 the ones that are listed on Appendix B for a      13 few moments.</p> <p>14 The first item, the      15 Kimberly-Clark litigation, you indicate there      16 you gave trial testimony.</p> <p>17 A. Correct.</p> <p>18 Q. What was the nature of the      19 opinions that you expressed in that      20 litigation?</p> <p>21 A. That litigation concerned in my      22 involvement, prices for its purchase by      23 hospitals. And so my opinion was related to      24 those prices and factors affecting those</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. Do you recall the lawyer who      2 cross-examined you?</p> <p>3 A. Oh, what's his name?</p> <p>4 Q. I'm sure you recall. I guess      5 the fair question is whether you recall his      6 name?</p> <p>7 A. That's my thought exactly. I      8 can picture him. He's been in the news. But      9 as I say, I'm -- in this moment, I'm sorry,      10 I -- in five seconds I'll recall it, but --</p> <p>11 Q. Okay.</p> <p>12 A. -- you asked me and I...      13 I'm embarrassed that I can't      14 remember it right now.</p> <p>15 Q. Now that you mention it, I seem      16 to recall seeing Mr. Avenatti's name      17 associated with that litigation in some news      18 reports.</p> <p>19 A. That sounds familiar.</p> <p>20 Q. Okay. I'm sure if you're      21 following recent news accounts, you're      22 probably feeling pretty good about what      23 you're reading about him these days, after      24 your cross-examine experience. But that's</p>

<p style="text-align: right;">Page 70</p> <p>1 another matter.</p> <p>2 A. I shouldn't comment, I suppose.</p> <p>3 Q. Okay. The next matter, the</p> <p>4 appraisal of Towers Watson &amp; Co. matter, what</p> <p>5 was the nature of the opinions you expressed</p> <p>6 in that litigation?</p> <p>7 A. That matter involved the</p> <p>8 valuation of a business that was involved in</p> <p>9 selling health insurance of a particular</p> <p>10 type. And so my opinions were related to the</p> <p>11 market for health insurance and how that</p> <p>12 might be performing.</p> <p>13 Q. Okay. It indicates it was in</p> <p>14 chancery court in Delaware. Was it some sort</p> <p>15 of corporate dispute?</p> <p>16 Do you recall the nature of the</p> <p>17 litigation?</p> <p>18 A. The dispute was over the</p> <p>19 valuation of a company that had been involved</p> <p>20 in a transaction.</p> <p>21 Q. Okay. How about the next</p> <p>22 matter, the Duke University matter? What was</p> <p>23 the nature of the opinions you gave in that</p> <p>24 matter?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. (BY MR. GOTTO) I should have</p> <p>2 asked you those same questions regarding the</p> <p>3 Delaware matter.</p> <p>4 Do you recall the -- either the</p> <p>5 law firm that retained you or any of the --</p> <p>6 any of the lawyers at that firm?</p> <p>7 A. No, I'm sorry.</p> <p>8 Q. Okay. Do you recall either the</p> <p>9 law firm or name of the lawyer who took your</p> <p>10 deposition in the Delaware matter?</p> <p>11 A. No.</p> <p>12 Q. How about in the Duke matter?</p> <p>13 A. Again, I can picture a face in</p> <p>14 the matter, but no, there are just too many</p> <p>15 names and jumbles going on for me to try to</p> <p>16 associate them all.</p> <p>17 MR. GOTTO: Okay. Why don't we</p> <p>18 take a short break. We'll reconvene</p> <p>19 in a few minutes.</p> <p>20 THE VIDEOGRAPHER: Approval of</p> <p>21 all counsel, going off the record.</p> <p>22 Time is approximately 10:32 a.m. This</p> <p>23 marks the end of recording Media</p> <p>24 No. 1.</p>
<p style="text-align: right;">Page 71</p> <p>1 A. That was a matter involving</p> <p>2 allegations about pay for academic</p> <p>3 physicians. And so I gave opinions about the</p> <p>4 market for academic physicians and how</p> <p>5 compensation might be affected by different</p> <p>6 environmental issues or contextual issues.</p> <p>7 Q. Do you remember the law firm</p> <p>8 that retained you in that matter?</p> <p>9 A. Again, I have worked with a</p> <p>10 number of law firms, and so I'd be guessing</p> <p>11 to try to associate particular law firms with</p> <p>12 these.</p> <p>13 Q. Okay.</p> <p>14 A. So no, not specifically, no.</p> <p>15 Q. Any individual lawyer you</p> <p>16 recall in connection with that matter?</p> <p>17 A. It's very hard for me to recall</p> <p>18 the names in this particular setting right</p> <p>19 here. So no. I can picture a face, but I --</p> <p>20 no.</p> <p>21 Q. Okay.</p> <p>22 MR. BREWER: He'll forget my</p> <p>23 name in a few weeks.</p> <p>24 THE WITNESS: I'm sorry to say.</p>	<p style="text-align: right;">Page 73</p> <p>1 (Recess taken, 10:32 a.m. to</p> <p>2 10:47 a.m.)</p> <p>3 THE VIDEOGRAPHER: With the</p> <p>4 approval of counsel, back on the</p> <p>5 record. The time is approximately</p> <p>6 10:47 a.m. This marks the recording</p> <p>7 Media No. 2.</p> <p>8 Q. (BY MR. GOTTO) Professor</p> <p>9 Baker, let's continue to go through the</p> <p>10 litigation matters that are listed on</p> <p>11 Appendix B to your report. We talked about</p> <p>12 the first three.</p> <p>13 Item No. 4, the Blue Shield of</p> <p>14 California matter. What was the nature of</p> <p>15 the opinions you expressed in that</p> <p>16 litigation?</p> <p>17 A. That matter had to do with</p> <p>18 insurance products and the characteristics of</p> <p>19 insurance products of -- my opinions were</p> <p>20 about the normal market for insurance</p> <p>21 products and their characteristics.</p> <p>22 Q. And the normal market meaning</p> <p>23 what?</p> <p>24 A. Meaning the kinds of</p>

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<p>1 identifiers of insurance products that are      2 found commonly offered to the public.      3 Q. Do you recall the law firm that      4 hired you in that matter, the names of any      5 the individual lawyers you worked with?      6 A. The law firms, no.      7 I believe one of the attorneys      8 was John Fogerty.      9 Q. Do you recall the lawyer who      10 took your deposition in that matter, or that      11 person's law firm?      12 A. No, I'm afraid I don't.      13 Q. Item 5, the Evident, Inc.      14 matter, what's the nature of the opinions you      15 rendered or formed in that opinion -- in that      16 case?      17 A. That was a matter involving      18 electronic medical records software, and my      19 opinions were about the common uses of      20 electronic medical records software in      21 hospitals and other parts of the healthcare      22 system, that -- the normal ways in which      23 those are used by hospitals.      24 Q. And do you -- what's the nature</p>	<p>1 the outcome of the case?      2 A. That's my understanding, yes.      3 Q. Item No. 6, the Mylan versus      4 Sanofi-Aventis matter, what was the nature of      5 the opinions you gave in that matter?      6 A. That's a matter related to      7 the -- my involvement is related to the      8 commercial success of a pharmaceutical      9 product, and so my opinions were related to      10 the assessment of commercial success for that      11 product.      12 Q. What was the nature of the      13 product?      14 A. It's a diabetes drug, insulin      15 product.      16 Q. Do you recall the name of the      17 firm that retained you or any lawyers?      18 A. Weil might come to mind more      19 specifically than it has for other cases      20 here, but again, I'm not completely sure I      21 have all of these right.      22 Q. Did you mean Weil as a name, or      23 were you using the word "while" as an adverb?      24 A. Oh, I'm sorry, Weil as a name.</p>
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<p>1 of Evident, Inc's business?      2 A. Evident, Inc. offers a medical      3 records software product for primarily dental      4 laboratories.      5 Q. Do you recall the law firm that      6 retained you in that matter or any of the      7 names of the individual lawyers?      8 A. No, I'm afraid I don't.      9 Q. How about the lawyer that took      10 your deposition or cross-examined you at      11 trial, and or that person's firm?      12 A. I'm afraid I can picture the      13 face again, but I can't come up with a name      14 for you.      15 Q. You indicated in that matter      16 you gave trial testimony April of last year.      17 Do you know what the outcome of      18 that case was?      19 A. I have a general understanding      20 that the outcome of the case was against the      21 client that I had worked for. I don't recall      22 the specific issues in the judgment.      23 Q. Was that also true as to item      24 No. 1, the Kimberly-Clark case, in terms of</p>	<p>1 Q. So it was Weil Gotshal? Is      2 that the firm?      3 A. I would say that's familiar,      4 yeah.      5 Q. And do you remember the name of      6 the lawyer who took your deposition or that      7 person's firm?      8 A. No.      9 Q. And item 7, Blue Cross Blue      10 Shield of Florida matter, what's the nature      11 of the opinions you formed in that case?      12 A. It's a matter involving      13 competition in insurance markets. And so my      14 opinions were related to how the market for      15 insurance was functioning, whether there was      16 evidence of problems with that market.      17 Q. And do you recall the name of      18 the firm that retained you or any of the      19 lawyers at that firm that you worked with?      20 A. Cravath, I believe, and Lauren      21 Kennedy is one of the lawyers.      22 Q. And you indicate that you gave      23 hearing testimony.      24 Was that in a courtroom or an</p>

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<p>1 administrative hearing? What was the nature 2 of that proceeding?</p> <p>3 A. It was in a courtroom.</p> <p>4 Q. Do you recall the name of the 5 lawyer who cross-examined you or that 6 person's firm?</p> <p>7 A. I'm sorry, I don't.</p> <p>8 Q. You indicate hearing. Are you 9 distinguishing a hearing from a trial?</p> <p>10 A. I wrote down hearing because I 11 understand it was a hearing preliminary to 12 the trial.</p> <p>13 Q. Okay.</p> <p>14 Do you know if that matter is 15 still currently pending?</p> <p>16 A. Yes, I believe there are 17 ongoing aspects to that matter.</p> <p>18 Q. Of the seven matters pending on 19 Exhibit B, can you tell me which ones, if 20 any, you've worked with Analysis Group?</p> <p>21 A. Yes. Let me take a look.</p> <p>22 That would be No. 2, No. 3, 23 No. 4.</p> <p>24 Q. And can you remember any of the</p>	<p>1 sure whether or not your -- your involvement 2 in those other five matters had been 3 disclosed to the other side; is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. I would request, if 6 after today if you can -- if, in fact, there 7 are -- if, in fact, in any of those matters 8 you did prepare a report that's been provided 9 to the other side, or if your involvement has 10 otherwise been disclosed to the other side in 11 that litigation, if you could supplement 12 Appendix B to identify those matters as well, 13 please.</p> <p>14 MR. BREWER: And I'm going to 15 object to the question just in that 16 he's only required to provide 17 testimony and not expert reports.</p> <p>18 MR. GOTTO: Okay. Fair enough. 19 Well, I understand your objection. I 20 reiterate my request, and we can just 21 move on from there.</p> <p>22 Q. (BY MR. GOTTO) I think you 23 indicated before the break that your first 24 involvement with Analysis Group goes back to</p>
<p>1 names that you worked with at Analysis Group 2 on those matters?</p> <p>3 A. So Federico Mantovanelli was 4 one of the people that I worked with on 5 No. 3.</p> <p>6 Mark Gustafson on No. 4 comes 7 to mind.</p> <p>8 Goodness. I'm trying to 9 recall, again, with lots of different people 10 over time. So those are the ones that I can 11 come up with for you.</p> <p>12 Q. Now, you indicated before the 13 break that since 2015, you've also provided 14 some expert work on I think you indicated 15 five matters other than those listed on 16 Appendix B; correct?</p> <p>17 A. That would be my estimate.</p> <p>18 Q. Sure. Did you work with 19 Analysis Group in any of those matters?</p> <p>20 A. I would have to estimate yes, 21 but I'm having a hard time coming up with the 22 specifics for that for you.</p> <p>23 Q. Okay. Okay. And I think you 24 indicated before the break that you weren't</p>	<p>1 the 1990s; correct?</p> <p>2 A. Yes.</p> <p>3 Q. Is that when you first 4 performed any sort of litigation-related 5 expert work?</p> <p>6 A. That's probably fair to say.</p> <p>7 Q. Okay. And so what were the 8 circumstances under which you were -- the 9 first time you took on a litigation expert 10 assignment?</p> <p>11 A. It's a little fuzzy, but I can 12 remember a matter involving hospital 13 competition in California.</p> <p>14 Q. Looking at Appendix B, since 15 2015 you list seven matters on Appendix B. 16 You've indicated there were about five 17 others. That's 12. And then there's the 18 opioids matter. So that's about 13 19 litigation-related engagements since 2015. 20 Prior to 2015, was sort of the 21 level of your activity as an expert witness 22 comparable?</p> <p>23 MR. BREWER: I object to the 24 question to the extent the question</p>

<p style="text-align: right;">Page 82</p> <p>1 mischaracterizes the witness's 2 previous testimony. 3 THE WITNESS: I'd say it was 4 less before the last five years. 5 Q. (BY MR. GOTTO) Okay. 6 So starting with the first 7 engagement back in the '90s, were there 8 periods of time -- say from the period from 9 whenever that first engagement was in the 10 '90s to 2015, were there periods of time when 11 you did not have any ongoing expert 12 engagements?</p> <p>13 A. I'm going to have a hard time 14 recalling the specifics of it. You know, the 15 last few years I've done more than I did 16 before. It used to come up from time to 17 time.</p> <p>18 And it may have been that there 19 was reasonably steady streams, but there may 20 have been some times in there where there was 21 no case at a particular time that I was 22 working on.</p> <p>23 Q. Okay.</p> <p>24 A. Hard to recall the specifics.</p>	<p style="text-align: right;">Page 84</p> <p>1 agent? 2 A. You know, there are vagaries 3 about how they determine or think about 4 vacation time that I would be at my 5 discretion. And so my general understanding 6 is that my appointment is for 11 months of 7 the year, but there are different 8 interpretations of the details of that, 9 depending on how exactly you look at it. 10 Q. Okay. So for those 11 months, 11 you can -- just round numbers, you can do 12 about 50 days of -- slightly under 50 days of 13 expert work. Is that fair? 14 A. Yes. 15 Q. That day-a-week limitation, 16 does that apply only to litigation-related 17 work or is that any outside professional 18 employment that you have? 19 A. I think that would extend to 20 outside employment that's not part of my 21 assignment at Stanford. 22 Q. Okay. 23 Have there been any times in 24 which your litigation expert work has</p>
<p style="text-align: right;">Page 83</p> <p>1 Q. Any particular reason that the 2 level has increased in the last few years? 3 A. I felt able to take on more 4 opportunities in my life. 5 Q. Did you do any -- do you take 6 any steps to try to -- to try to solicit 7 business as an expert witness? 8 A. No. 9 Q. Don't do any advertising, 10 anything like that? 11 A. Nothing that I do, no. 12 Q. Does your -- are there any 13 restrictions or limitations imposed by 14 Stanford in terms of the amount of litigation 15 consulting work you're able to do? 16 A. Yes. I'm able to do work up to 17 a day a week. 18 Q. And is it just for the academic 19 year or is that calendar year? 20 A. Oh, I suppose that would 21 probably go for 11 months of the year and 22 average out at a day a week. 23 Q. Okay. And then for the 12th 24 month, you can do your -- you're a free</p>	<p style="text-align: right;">Page 85</p> <p>1 exhausted your day-a-week allotment? 2 A. No. My understanding is that's 3 averaged over, you know, multiple weeks or 4 multiple months to make the calculation. And 5 so I believe it's -- I've kept it within the 6 allotment. 7 Q. Okay. Do you report to 8 Stanford -- anything formal -- with respect 9 to your outside activities? 10 A. There are required disclosures 11 for NIH grants. To the extent that I would 12 have conflicts that might be viewed as a 13 conflict by the NIH, I have to report that. 14 But otherwise, no. 15 Q. Okay. 16 A. I certify that I'm in 17 compliance. 18 Q. You provide a certification 19 that you are in compliance with this 20 day-a-week limitation? 21 A. Yes. 22 Q. Is that day-a-week limitation a 23 formal policy at Stanford? 24 A. Yes.</p>

<p style="text-align: right;">Page 86</p> <p>1 Q. And so if I wanted to review 2 that policy, where would I look in the 3 Stanford, you know, library of materials? 4 A. I have no idea. 5 Q. Okay. But your understanding 6 is it's written down somewhere and is 7 applicable to faculty at Stanford? 8 A. Yes. 9 Q. If we looked at the periods 10 2015 through 2018, on average over that 11 period, what percentage of your compensation 12 have you derived from expert witness work? 13 Approximately. 14 A. Well, that's a calculation I 15 have not made. A quarter? As a guess or an 16 estimate. 17 Q. Okay. Have there been any 18 particular years when the amount was 19 significantly different from approximately 20 25 percent? 21 A. Oh, I'd have to go think that 22 through. I'm sure it goes up and down from 23 year to year. May have been a little higher 24 in some and a little lower in others.</p>	<p style="text-align: right;">Page 88</p> <p>1 witness earnings be in the, would it be fair 2 to say, 70 to \$100,000 range? 3 A. Yeah. I'm following the 4 calculation that you're making. I'd have to 5 go back and look at the averages over that 6 time period to get it right. It's possible 7 that it's a little higher than that, as I 8 think about it. 9 Right. Something -- right, 10 something like that. So as you put that 11 calculation, maybe it's 30 percent, but... 12 Q. Okay. 13 A. That's the right ballpark. 14 Q. Okay. So it sounds like maybe 15 if we use 75 to 125,000 for the expert 16 witness compensation, we'd be approximately 17 right? 18 A. Probably, yes. 19 Q. In the last five years, have 20 you received any compensation for speaking 21 engagements of any sort? 22 A. I don't think so in the last 23 five years. 24 Q. Okay. Prior to that time have</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Apart from your expert witness 2 work, since 2015 -- and I realize you 3 mentioned the honoraria earlier, and so we 4 can exclude those as well -- are there any 5 other items of recurring income -- and I 6 don't want -- I'm not referring here to 7 passive investments, but income for services 8 that you have received other than your 9 employment at Stanford, expert witness work, 10 and the honoraria you've identified? 11 A. If there is, it's a minimal 12 amount. I can't think of anything in that 13 time period that would be relevant. 14 Q. And your compensation at 15 Stanford, is that a fixed amount? 16 A. It's a salary, yes. 17 Q. And what's the amount 18 currently? 19 A. It's 350,000. 20 Q. Okay. 21 A. Maybe a little higher than 22 that. 23 Q. Okay. And so estimates since 24 2015, approximate annual amount of expert</p>	<p style="text-align: right;">Page 89</p> <p>1 you? 2 A. I can recall an engagement of a 3 few years back that I got a speaking fee. 4 Q. Okay. And do you recall the 5 nature of the engagement? 6 A. It was to speak to a group 7 associated with an insurance company about 8 variations in healthcare use across different 9 areas, different geographic areas. 10 Q. And do you recall the amount of 11 the fee that you received? 12 A. I think it was \$5,000. 13 Q. In the last five years, have 14 you received any compensation for 15 participation in any conferences, any 16 professional conferences? 17 A. No. 18 Q. Have you -- in the last five 19 years, have you received any compensation for 20 publicly expressing any opinions with respect 21 to pharmaceutical -- the pharmaceutical 22 industry? 23 A. No. 24 Q. How about any opinions with</p>

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<p>1 respect to any aspect of the medical 2 industry?</p> <p>3 MR. BREWER: Objection, form.</p> <p>4 THE WITNESS: Not that I can 5 think of.</p> <p>6 Q. (BY MR. GOTTO) Same questions 7 prior to the last five years: Any 8 compensation you can recall receiving for 9 publicly expressing any opinions related to 10 the pharmaceutical industry?</p> <p>11 MR. BREWER: Same objection. 12 THE WITNESS: No.</p> <p>13 Q. (BY MR. GOTTO) Or the medical 14 industry?</p> <p>15 MR. BREWER: Same objection. 16 THE WITNESS: No.</p> <p>17 Q. (BY MR. GOTTO) Do you have any 18 equity ownership in any business, public or 19 private, related -- that's engaged in any 20 aspect of the pharmaceutical industry?</p> <p>21 A. No. Other than maybe through a 22 mutual fund that I don't know of the direct 23 investment in.</p> <p>24 Q. And same question with respect</p>	<p>1 Q. Do you remember the approximate 2 time frame on that?</p> <p>3 A. Oh, it's been going on for the 4 last year or so, and it's still going on.</p> <p>5 Q. And approximate magnitude of 6 the compensation you've received?</p> <p>7 A. So far, maybe \$2,000.</p> <p>8 Q. With respect to the 9 approximately five litigation engagements 10 since 2015 which are not included on 11 Appendix B, do any of them relate in any way 12 to the opioid crisis?</p> <p>13 A. No.</p> <p>14 Q. Have you ever testified in any 15 litigation prior to 2015 that related in any 16 way to the opioid crisis?</p> <p>17 A. No.</p> <p>18 Q. Have you ever testified before 19 Congress?</p> <p>20 A. No.</p> <p>21 Q. How about any state 22 legislature?</p> <p>23 A. Yes.</p> <p>24 Q. On what occasion?</p>
<p>1 to any company, public or private, that's 2 engaged in any aspect of the medical 3 industry.</p> <p>4 A. No.</p> <p>5 Q. Are you the holder of any 6 patents?</p> <p>7 A. No.</p> <p>8 Q. Or any applications for any 9 patents?</p> <p>10 A. No.</p> <p>11 Q. Ever been listed as an inventor 12 on a patent?</p> <p>13 A. No.</p> <p>14 Q. In the last five years, apart 15 from litigation-related consulting, have you 16 had any other consulting engagements for 17 which you were compensated?</p> <p>18 A. I can recall one small one with 19 a company that had a product that we were 20 helping them think about how to evaluate.</p> <p>21 Q. What was the nature of the 22 product?</p> <p>23 A. Product designed to encourage 24 or help people get better sleep.</p>	<p>1 A. The California state 2 legislature on an occasion or two in which 3 they were holding hearings related to aspects 4 of the healthcare system in California.</p> <p>5 Q. Do you remember the approximate 6 time -- time frame?</p> <p>7 A. The one that I can remember was 8 in the last few years. They were considering 9 reforms one could make to the California 10 healthcare system, and they held a hearing to 11 hear from some academics about that.</p> <p>12 Q. And what was the particular 13 subject matter of your testimony?</p> <p>14 A. It was related to competition 15 in California. Competition for healthcare 16 providers in California.</p> <p>17 Q. And how did you come to do that 18 testimony? Were you approached, or did you 19 approach someone?</p> <p>20 A. Oh, I was approached by someone 21 from the committee that was holding the 22 hearing.</p> <p>23 Q. Have you ever provided any 24 testimony either oral or written to the DEA?</p>

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	<p>1 A. No.</p> <p>2 Q. How about the FDA?</p> <p>3 A. No. I'm trying to -- I don't</p> <p>4 believe so, no.</p> <p>5 Q. You were hesitating as if there</p> <p>6 was something that you thought might fall</p> <p>7 into that category.</p> <p>8 A. Oh, I just took a look at No. 6</p> <p>9 here.</p> <p>10 Q. Okay.</p> <p>11 A. To make sure that that did not</p> <p>12 list the FDA, and it listed the Patent and</p> <p>13 Trademark Office.</p> <p>14 Q. How about the CDC?</p> <p>15 A. No.</p> <p>16 Q. And any grand jury?</p> <p>17 A. No.</p> <p>18 Q. Do you know if there's a</p> <p>19 transcript of the testimony you gave to the</p> <p>20 California legislature?</p> <p>21 A. I'm not aware if there is.</p> <p>22 Q. Apart from grants issued by</p> <p>23 governmental agencies in connection with</p> <p>24 research you've done, have you ever had --</p>	<p>1 Q. And do you have continuing</p> <p>2 involvement with that organization?</p> <p>3 A. Yes.</p> <p>4 Q. And what is your continuing</p> <p>5 involvement?</p> <p>6 A. Oh, I continue to be affiliated</p> <p>7 with them as a research associate.</p> <p>8 Q. Okay. How does one become</p> <p>9 affiliated with the National Bureau of</p> <p>10 Economic Research?</p> <p>11 A. There's a nomination process,</p> <p>12 and so one is nominated and then accepted, I</p> <p>13 suppose, as a member.</p> <p>14 Q. Is it generally viewed as a</p> <p>15 prestigious retention?</p> <p>16 A. I don't know how to attach</p> <p>17 meaning to that. It's positively viewed in</p> <p>18 the field.</p> <p>19 Q. What does your ongoing</p> <p>20 involvement as a fellow, a research fellow</p> <p>21 for the NBER entail?</p> <p>22 A. So it's as a research</p> <p>23 associate.</p> <p>24 Q. I'm sorry.</p>
	<p>1 received compensation from the federal</p> <p>2 government for any services?</p> <p>3 A. No. The most I -- I don't</p> <p>4 believe so. The most I can think of would be</p> <p>5 an honorarium associated with, say, grant</p> <p>6 review, if, in fact, I got an honorarium</p> <p>7 associated with grant review. So those would</p> <p>8 be smaller amounts. That would have been the</p> <p>9 kind of thing we reviewed earlier.</p> <p>10 Q. Okay. How about any state</p> <p>11 government? Any compensated employment apart</p> <p>12 from a grant for research?</p> <p>13 A. I don't believe so, no.</p> <p>14 Q. On Appendix A to your report,</p> <p>15 the first page to your CV, you indicate under</p> <p>16 Other Appointments, you indicate from 1994 to</p> <p>17 2002, you were a faculty research fellow at</p> <p>18 the National Bureau of Economic Research.</p> <p>19 What is the National Bureau of</p> <p>20 Economic Research?</p> <p>21 A. That is an organization that</p> <p>22 facilitates and encourages economic research.</p> <p>23 Brings people together for meetings and helps</p> <p>24 encourage research projects.</p>	<p>1 A. And I attend meetings from time</p> <p>2 to time, and work on projects associated with</p> <p>3 NBER. They have some data that I use, for</p> <p>4 example.</p> <p>5 Q. And they maintain data that you</p> <p>6 sometimes use in your research?</p> <p>7 A. Yes.</p> <p>8 Q. I think you indicated earlier</p> <p>9 that there were, in addition to Exhibit 2,</p> <p>10 there were perhaps some other of your</p> <p>11 publications that related to opioids.</p> <p>12 Could you identify those for</p> <p>13 me, please?</p> <p>14 A. Yes. Let me flip through here.</p> <p>15 [Document review.]</p> <p>16 A. So on the list of publications</p> <p>17 by the number, it would be No. 125.</p> <p>18 No. 130.</p> <p>19 No. 132.</p> <p>20 No. 133.</p> <p>21 Q. Is that it?</p> <p>22 A. Yes. I'm sorry.</p> <p>23 Q. Okay. So if we look at</p> <p>24 No. 125, Incidence of and Risk Factors for</p>

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<p>1 Chronic Opioid Abuse Among Opioid-Naive      2 Patients in the Postoperative Period, from      3 September of 2016, can you tell me what your      4 contributions to that paper were?</p> <p>5 A. Yes. So you can see that there      6 are four authors listed. So I worked with      7 others to write that paper.</p> <p>8 My particular expertise as      9 relates to that paper was in the use of the      10 database that the analyses were derived from.      11 So I had arranged for some      12 access to that database, and I have some      13 expertise to its use, and so I contributed      14 that to the team.</p> <p>15 Q. Okay.</p> <p>16 A. I also worked on drafting the      17 manuscript and different aspects of doing the      18 research.</p> <p>19 Q. What were the circumstances      20 under which you got involved in that      21 particular project?</p> <p>22 A. Oh, Professor Sun, who is the      23 lead author, is a colleague of mine at      24 Stanford, and we cross paths from time to</p>	<p>1 paper was aiming to study.</p> <p>2 Q. What's the nature of the      3 database that you're referring to?</p> <p>4 A. Oh, it's -- it's a large claims      5 database that contains insurance claims for a      6 large group of people.</p> <p>7 Q. Is it one of the NBER databases      8 that you referred to earlier?</p> <p>9 A. Yes.</p> <p>10 Q. And your involvement in the      11 paper under 130, did that come about with      12 your same interactions with Professor Sun?</p> <p>13 A. Yes. I would say principally      14 so.</p> <p>15 Q. How about item 132, which is a      16 September of 2000 -- am I reading it right?      17 Looks like it's September 2017, published      18 paper, with a long title that I won't read.      19 What was your contribution to      20 that paper?</p> <p>21 A. Again, that will be similar.      22 That also uses that database of insurance      23 claims, and so I was participating with the      24 group of people helping them do analyses and</p>
<p>Page 99</p> <p>1 time. And we had a conversation about his      2 interest in working on this question and the      3 fact that I had a database that might allow      4 one to look at it. And we -- with, of      5 course, other conversations that he or I were      6 having as well, came up with the idea of      7 doing the research project.</p> <p>8 Q. How about item 130, the 2017      9 paper on Association Between Concurrent Use      10 of Prescription Opioids and Benzodiazapines?      11 Do I have that right?</p> <p>12 A. Pretty close.</p> <p>13 Q. And Overdose: Retrospective      14 Analysis.</p> <p>15 What was your contribution to      16 that paper?</p> <p>17 A. It was similar. You can see,      18 again, there are several coauthors to that      19 paper, so I participated as a member of a      20 group in writing this paper. This uses the      21 same database that I had arranged for access      22 to and was expert in using, and so I      23 contributed my expertise in how to use the      24 database to address the questions that the</p>	<p>Page 101</p> <p>1 think about the way to use the database to      2 conduct analyses of the questions that were      3 of interest to the paper.</p> <p>4 And I'll just be clear, I also      5 participated in the writing of the paper and      6 other aspects of authoring the paper.</p> <p>7 Q. And item 133, which is also a      8 2017 publication, what was your involvement      9 in that paper?</p> <p>10 A. I would give a similar answer      11 to the one I just gave. I can give it again      12 if you --</p> <p>13 Q. No, that's fine. That's fine.      14 Thank you.</p> <p>15 And I see that paper, Professor      16 Sun's not listed on that one. What were the      17 circumstances under which you became involved      18 in that project?</p> <p>19 A. Professor Sun is listed on that      20 one.</p> <p>21 Q. Oh, I'm sorry.</p> <p>22 A. As the last author.</p> <p>23 Q. I see. I'm sorry. So then it      24 would be similar circumstances to your</p>

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<p>1 interaction with him as what --</p> <p>2 A. Yes.</p> <p>3 Q. -- brought that about?</p> <p>4 A. Yes.</p> <p>5 Q. The four papers that you've</p> <p>6 just identified, 125, 130, 132, and 133, did</p> <p>7 you perform any research or analysis in</p> <p>8 connection with those papers with respect to</p> <p>9 the economic consequences of the opioid</p> <p>10 crisis?</p> <p>11 MR. BREWER: Objection, vague.</p> <p>12 THE WITNESS: You can see the</p> <p>13 titles of the work that we were doing.</p> <p>14 So we were interested in the incidence</p> <p>15 and risk factors of opioid use. So we</p> <p>16 were interested in concurrent use of</p> <p>17 benzodiazapines. We were interested</p> <p>18 in nerve blocks.</p> <p>19 I would not characterize those</p> <p>20 as directly related to the economic</p> <p>21 consequences of the opioid crisis.</p> <p>22 These papers all involved opioids.</p> <p>23 Q. (BY MR. GOTTO) Fair to say</p> <p>24 that none of them involve any costs incurred</p>	<p>1 A. Oh, we've been colleagues at</p> <p>2 Stanford for many years, going back to when I</p> <p>3 first came there when he did, around the same</p> <p>4 time.</p> <p>5 I think at one point we crossed</p> <p>6 paths and started talking about research</p> <p>7 ideas and came to write some -- write what</p> <p>8 would be our first paper. I'd have to go</p> <p>9 look back at it, but it's just in the normal</p> <p>10 course of interacting with my colleagues.</p> <p>11 Q. Okay. Do you view Professor</p> <p>12 Kessler's area of expertise as similar to</p> <p>13 yours?</p> <p>14 A. I don't know how he would</p> <p>15 characterize his area of expertise. I see</p> <p>16 him as an economist and interested in</p> <p>17 healthcare.</p> <p>18 Q. And you're an economist that's</p> <p>19 interested in healthcare too, right?</p> <p>20 A. Yes.</p> <p>21 Q. Are there any particular</p> <p>22 focuses of your academic or research work</p> <p>23 that you associate with Professor Kessler as</p> <p>24 being in any way different from your own</p>
<p style="text-align: center;">Page 103</p> <p>1 by governmental agencies as a result of the</p> <p>2 opioid crisis?</p> <p>3 A. Yes, that's correct.</p> <p>4 Q. Apart from your report in this</p> <p>5 case, have you performed any research with</p> <p>6 respect to the costs incurred by any</p> <p>7 governmental agencies as a result of the</p> <p>8 opioid crisis?</p> <p>9 MR. BREWER: Objection, form.</p> <p>10 THE WITNESS: I don't believe</p> <p>11 so, no.</p> <p>12 Q. (BY MR. GOTTO) You've</p> <p>13 coauthored a number of papers with Professor</p> <p>14 Kessler; correct?</p> <p>15 A. Yes.</p> <p>16 Q. And when did you first</p> <p>17 collaborate with him on a project?</p> <p>18 A. It would be years ago. I -- we</p> <p>19 could search through here to find some</p> <p>20 specifics about that, but a number of years</p> <p>21 ago.</p> <p>22 Q. Okay. What were the</p> <p>23 circumstances under which you first began</p> <p>24 working with Professor Kessler?</p>	<p style="text-align: center;">Page 105</p> <p>1 focuses?</p> <p>2 A. Oh, I've seen him do</p> <p>3 interesting work on lots of issues in</p> <p>4 healthcare. I think we're both interested in</p> <p>5 a broad set of issues in healthcare and</p> <p>6 health economics.</p> <p>7 Q. So when the two of you</p> <p>8 collaborate on a paper, is there a particular</p> <p>9 division of responsibilities that you employ?</p> <p>10 A. No. I think it's specific to</p> <p>11 the individual matter, the individual paper</p> <p>12 that we'd be working on.</p> <p>13 Q. So Exhibit 2, I believe we</p> <p>14 labeled it, is the working paper that you and</p> <p>15 Professor Kessler and Professor Bundorf are</p> <p>16 working on; correct?</p> <p>17 A. Yes.</p> <p>18 Q. What were the circumstances</p> <p>19 under which you commenced work on this</p> <p>20 project?</p> <p>21 A. This would be similar to other</p> <p>22 projects. We cross paths, Professor Kessler</p> <p>23 and I and Professor Bundorf, from time to</p> <p>24 time. And I think we had taken note of the</p>

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<p>1 fact that we had some data that would allow      2 us to take a look at an aspect of the issue      3 here with insurance coverage and opioid use      4 that hadn't been looked at to our knowledge      5 before. And so we identified that in a      6 conversation and decided to go look into it.</p> <p>7 Q. Have you worked with Professor      8 Bundorf on other projects?</p> <p>9 A. Yes.</p>	<p>1 Yes. Some by way of Analysis      2 Group, but from counsel I understand      3 originally.</p> <p>4 Q. Was there anything listed under      5 Court Documents that you received by way of a      6 request by you, or were these matters simply      7 provided to you by counsel or by Analysis      8 Group?</p> <p>9 A. So in my work on the report, I      10 had asked the -- the support team to make me      11 aware of materials that might be relevant to      12 the points I was making -- the points I was      13 trying to make.</p>
<p>10 Q. Was there a division of      11 responsibilities among the three of you in      12 the preparation of the paper that we've      13 marked as Exhibit 2?</p> <p>14 A. Oh, I'd say we all made      15 contributions to the writing of the paper. I      16 think Professor Kessler carried out most of      17 the specific analyses, and then we would meet      18 to discuss and work on the ideas and the      19 writing of the paper.</p>	<p>14 And so in response to that      15 request, for example, you know, I'd say      16 that's how I became aware of the Alexander      17 report they identified that has something the      18 support team knew about and thought maybe I'd      19 want to take a glance at.</p>
<p>20 Q. The current status of this      21 paper is -- it has not been peer-reviewed at      22 this point; is that correct?</p> <p>23 A. It's submitted to a peer-review      24 journal, so that peer review may be ongoing.</p>	<p>20 I'd say the same thing about      21 the Rafalski report. Others of these I think      22 I was provided as part of my assignment.</p> <p>23 Thinking about the depositions,      24 again I -- that came from Analysis Group and</p>
<p>Page 107</p> <p>1 I can't speak to that. But this is a working      2 paper, and it's not yet finished the      3 peer-review process.</p> <p>4 Q. Your anticipation at the      5 conclusion of the peer-review process, it      6 would be published in an academic journal?</p> <p>7 A. I hope it's successful.</p> <p>8 Q. Okay.</p> <p>9 If you'd turn to the Materials      10 Reviewed list that I believe is Appendix C --      11 your Materials Reviewed list, Appendix C to      12 your report.</p> <p>13 A. Yes.</p> <p>14 Q. Fair to say that the materials      15 listed on Appendix C are all of the materials      16 you considered in formulating your opinions      17 here?</p> <p>18 A. I believe that's correct, yes.</p> <p>19 Q. Okay. You list under Court      20 Documents: plaintiff expert reports,      21 depositions, and court filings.</p> <p>22 Did you receive all of those      23 from counsel?</p> <p>24 A. Yes.</p>	<p>Page 109</p> <p>1 from the support team as part of my request      2 that they help me identify things that I      3 should be looking at, and they were aware of      4 what I wanted to do.</p> <p>5 So I thought it was quite      6 natural for them to provide that. And if I      7 hadn't heard from them, I probably would have      8 asked for the chance to look at some of that      9 material if I had known about it.</p> <p>10 So I -- so there's, you know, a      11 bit of back and forth in this.</p> <p>12 Q. Focusing on the plaintiff      13 expert reports, you've already testified      14 regarding Dr. Alexander's report, so we can      15 exclude that one.</p> <p>16 The Rafalski report -- correct      17 me if I'm wrong. I don't think you commented      18 on that report in your report; is that      19 correct?</p> <p>20 A. No. I think that appears in a      21 footnote or two, but there's no specific      22 comment on that, no.</p> <p>23 Q. And the Rafalski report, did      24 you personally review it?</p>

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<p>1       A. I would say it was brought to      2 my attention that there might be something in      3 there that I should look at. So I took a      4 glance through the whole thing, but I      5 specifically looked at a very small part of      6 it that would have been relevant to my      7 footnote.</p> <p>8       Q. And what was that part that you      9 looked at?</p> <p>10      A. Oh, I'd have to go back in my      11 report. But it --</p> <p>12      Q. Is it identified in your      13 report?</p> <p>14      A. Yeah. It's a footnote in my      15 report to the relevant piece of material.</p> <p>16      Q. That's fine.</p> <p>17      The remaining reports that are      18 listed on Appendix C, I believe, are all      19 reports that you comment on in varying      20 degrees of detail in your report.</p> <p>21      Did you review each of them      22 personally?</p> <p>23      A. Yes.</p> <p>24      Q. And the deposition transcripts</p>	<p>1       Q. And in what context do you know      2 Professor Cutler?</p> <p>3       A. We both work in the same area.      4 So cross paths from time to time at      5 professional meetings or in other contexts      6 related to our work.</p> <p>7       Q. For about how long have you      8 known him and crossed paths with him?</p> <p>9       A. Oh, going back to the 1990s      10 again.</p> <p>11      Q. Apart from this matter, have      12 you had occasion in any of your expert      13 litigation engagements to comment on any of      14 Professor Cutler's work?</p> <p>15      A. Not that I can recall      16 specifically. I can -- I've been in      17 conferences where he's presented his work      18 and, although I can't recall it specifically,      19 I sometimes ask questions at those meetings.      20 And so it may be that you would construe that      21 as a comment of sorts, but not in a formal      22 way like we're talking about here.</p> <p>23      Q. And I think I was asking      24 initially in a way of an actual litigation</p>
<p>1       that you list on Appendix C, did you review      2 those personally as well?</p> <p>3       A. So those, I would say I      4 reviewed sections, in some cases significant      5 sections of, but I would not say I've      6 reviewed the entirety of those in detail.</p> <p>7       Q. Okay. How did you know which      8 sections to review?</p> <p>9       A. Oh, this was a result of,      10 again, a request to the support team to, with      11 the points I was making in mind, help me      12 identify parts of those that I should be      13 looking at. So they would call that to my      14 attention; I would read sections.</p> <p>15      It's my custom to read a few      16 pages before and a few pages after any      17 section they identified, so that would lead      18 to me reviewing chunks of these depositions.</p> <p>19      Q. Do you know Dr. McCann apart      20 from this engagement? Any familiarity with      21 him?</p> <p>22      A. No.</p> <p>23      Q. How about Professor Cutler?</p> <p>24      A. Yes.</p>	<p>1       setting, where it's similar to what we've got      2 here, where there's an expert report that      3 you've commented on. That hasn't occurred      4 previously; correct?</p> <p>5       A. That's correct.</p> <p>6       Q. Have you ever participated in      7 the peer review of any paper that Professor      8 Cutler was an author on?</p> <p>9       A. I peer review a lot of papers.      10 And it is quite possible, but I couldn't      11 recall a specific instance in this -- as I      12 sit here right now.</p> <p>13      Q. And obviously you express in      14 your report here various commentary and      15 criticisms on Professor Cutler's report.</p> <p>16      As a general matter, do you      17 have an opinion on Professor Cutler's      18 academic rigor?</p> <p>19      MR. BREWER: Objection to form.      20      THE WITNESS: I have seen      21 Professor Cutler do some nice work      22 over the years, and I have a generally      23 positive view of research that he      24 does. I'd be careful to say that I</p>

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<p>1       would never extend a general view like      2       that to anything and everything      3       someone does or says.</p> <p>4       Q. (BY MR. GOTTO) Apart from      5       Professor Cutler's report in this matter, can      6       you recall any other work of Professor Cutler      7       as to which you've ever expressed any      8       meaningful criticism?</p> <p>9       A. I can't recall a specific      10      instance, no.</p> <p>11      Q. How about Professor Gruber? Do      12      you know him apart from this litigation?</p> <p>13      A. Yes.</p> <p>14      Q. And in what context do you know      15      him?</p> <p>16      A. In a similar way. We both work      17      in the same general area and so cross paths      18      from time to time, even with some regularity      19      lately, at meetings and conferences and other      20      settings.</p> <p>21      Q. And for about how --</p> <p>22      A. And --</p> <p>23      Q. I'm sorry, I didn't mean to      24      interrupt.</p>	<p>1       Q. And again, apart from this      2       case, have there been any indications on      3       which you can recall expressing any material      4       criticism of any work done by Professor      5       Gruber?</p> <p>6       A. Not in any formal sense, no.</p> <p>7       Q. And do you have a general      8       opinion of the quality of the work of      9       Professor Gruber that you've seen apart from      10      work in this litigation?</p> <p>11      A. Oh, I would give a similar      12      answer to the one I gave before. I've      13      observed Professor Gruber do some good work      14      over time, and I -- my general impression is      15      positive of the work that he does. But      16      again, I would never extend that as a blanket      17      statement to anything that -- or everything      18      that he's ever done.</p> <p>19      Q. How about Professor Rosenthal?      20      Are you -- do you have -- are you familiar      21      with her apart from this litigation?</p> <p>22      A. Yes.</p> <p>23      Q. And in what context?</p> <p>24      A. In a similar context. We cross</p>
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<p>1       A. And all related to work.</p> <p>2       Q. And for about how long have you      3       had that sort of relationship with Professor      4       Gruber?</p> <p>5       A. Oh, I probably first      6       encountered him back in the 1990s also.</p> <p>7       Q. Have you ever participated in      8       the peer review of any paper that he was an      9       author on?</p> <p>10      A. In the same way I regularly do      11      peer review and have reviewed a large number      12      of manuscripts. So it is not unlikely at all      13      that there is something from him in that, but      14      I can't recall a specific instance.</p> <p>15       I'll also just note that in      16      many cases the authors are -- of papers that      17      one is peer reviewing are not revealed to the      18      peer reviewer. So it's possible that I did      19      and wouldn't have been able to know.</p> <p>20      Q. Okay. In a litigation setting,      21      apart from this case, have you had occasion      22      to comment on any report or testimony      23      provided by Professor Gruber?</p> <p>24      A. No.</p>	<p>1       paths -- or have crossed paths from time to      2       time.</p> <p>3       Q. And approximate time frame?</p> <p>4       A. That's less clear to me. It's      5       not as far back as Professors Cutler and      6       Gruber, but it would go back a number of      7       years that I've seen her around.</p> <p>8       Q. Okay. And to your knowledge,      9       have you ever participated in a peer review      10      of a paper in which she was an author?</p> <p>11      A. It's the same answer. It's      12      likely at some point that it happened. I      13      couldn't recall specifics.</p> <p>14      Q. And in a litigation setting      15      apart from this case, have you had occasion      16      to comment on any expert report or testimony      17      that she's provided?</p> <p>18      A. No.</p> <p>19      Q. And in any setting, have you      20      had -- can you recall a situation in which      21      you expressed any material disagreement with      22      any work of Professor Rosenthal?</p> <p>23      A. No.</p> <p>24      Q. And do you have a general</p>

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<p>1 opinion as to the quality of Professor      2 Rosenthal's academic work?      3 A. My answer would, again, be      4 similar to the one I gave before for the      5 other two.      6 Q. And how about Professor      7 McGuire? Do you have familiarity with him      8 apart from this litigation?      9 A. Yes.      10 Q. In what context?      11 A. In the same way. We worked in      12 the same area and have crossed paths from      13 time to time.      14 Q. Any approximate time frame?      15 A. Back to the 1990s again.      16 Q. Okay. And have you, to your      17 knowledge, participated in peer review of any      18 papers that Professor McGuire is an author      19 on?      20 A. The same answer that I gave      21 before.      22 Q. And I apologize for the      23 repetition of questions. I think you can      24 discern the pattern that is emerging here.</p>	<p>1 retained by counsel for any of the defendants      2 in this matter?      3 A. No.      4 Q. Have you reviewed any      5 transcripts of testimony given in this      6 litigation other than the four deposition      7 transcripts that you list on Appendix C?      8 A. No.      9 Q. Were the -- strike that.      10 You list a number of      11 publications under Academic Literature and      12 Publicly Available Documents.      13 How did you compile that list?      14 A. There were multiple parts of      15 the work to compile that list. Some of this      16 is literature that I knew of or had taken      17 note of over the last few years as I've been      18 entrusted in this area and have followed      19 along.      20 So I've actually tried to keep      21 up myself with some of the literature and so      22 knew a number of these papers from that.      23 I've worked on these other      24 papers and so had some idea of where to look</p>
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<p>1 But in the litigation setting,      2 apart from this case, have you had occasion      3 to comment on any expert report or testimony      4 provided by Professor McGuire?      5 A. No.      6 Q. And in any setting can you      7 recall, apart from this case, expressing any      8 material disagreement with any work done by      9 Professor McGuire?      10 A. No.      11 Q. And do you have an overall      12 general view as to the academic quality of      13 the work done by Professor McGuire?      14 A. It would be the same kind of      15 answer that I've given in the previous      16 questions.      17 Q. Apart from the expert reports      18 that are listed on Appendix C, are you aware      19 of the identity of any other plaintiff      20 experts who have submitted reports in this      21 litigation?      22 A. No, I don't believe I am.      23 Q. And have you reviewed any      24 reports submitted by any other expert</p>	<p>1 for materials from that. And then in      2 addition, I asked the support team to do      3 their own look at the literature and inform      4 me of things that they identified that they      5 thought could be relevant to my work, and so      6 then I would take a look at things that they      7 suggested.      8 Q. Were any of the materials      9 listed under Academic Literature or Publicly      10 Available Documents brought to your attention      11 by the support team other than after -- than      12 following up on a request by you?      13 A. No. It was part of the plan      14 that they would go look into these -- look      15 into the literature and help me identify      16 things of interest. And that was part of the      17 plan from the outset.      18 Q. Okay. And in terms of the plan      19 from the outset, was there subject matter or      20 subject matters as to which they were going      21 to review the literature and report back to      22 you?      23 A. So they were aware of the kinds      24 of points that I was interested in making,</p>

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<p>1 and so the request was actually related to      2 those points. And so it's across the      3 spectrum of things that I was looking at in      4 my report.</p> <p>5 Q. Can you articulate for me what      6 some -- what all of those points were?</p> <p>7 A. For example, the kinds of      8 factors that are associated with use of      9 opioids.</p> <p>10 Q. Okay. Any others you can think      11 of?</p> <p>12 A. We would have to start going      13 through the report. The report deals with      14 the multiple different areas and so it would      15 essentially be any area in my report.</p> <p>16 Q. Were the matters or the items      17 that are listed on Appendix C provided to you      18 in hard copy or electronically or a      19 combination. Do you recall?</p> <p>20 A. They were generally posted on a      21 website that I could use to go look, and I      22 could look at them on the website.</p> <p>23 Q. And I realize you indicated      24 that you had an existing familiarity with</p>	<p>1 Group that would have filled out my      2 understanding.</p> <p>3 So it was not that I was      4 conducting a specific literature review for      5 this matter other than the kinds of things      6 that I just talked about: Trying to make      7 sure that I had a sense of what was out in      8 the literature from my own experience, from      9 following that up where it led me, and then      10 from Analysis Group.</p> <p>11 Q. So is there -- apart from your      12 work in this litigation, do you maintain a      13 file or some other compilation of      14 opioid-related academic literature as a      15 result of your efforts to stay current in      16 this area?</p> <p>17 A. No. It's more that I paid      18 attention to things that were coming along      19 and would try to read them.</p> <p>20 Q. Okay.</p> <p>21 MR. GOTTO: Why don't we take a      22 few minutes.</p> <p>23 THE VIDEOGRAPHER: With      24 approval of counsel, going off the</p>
<p style="text-align: center;">Page 123</p> <p>1 some of the academic literature that you list      2 on Appendix C. Did you personally perform      3 any literature review other than identifying      4 literature you were already familiar with?</p> <p>5 A. Over the last few years, I've      6 tried to keep up on the literature, and so      7 I'm not sure whether you'd call that a      8 systematic literature review. But even      9 preceding this -- predating this matter, I      10 was trying to pay attention to things coming      11 through.</p> <p>12 Q. Okay. But after you were      13 retained in this matter, understanding you      14 were already familiar with much of the      15 literature in this area -- and I understand      16 from your earlier answer that there was a      17 literature review performed by Analysis Group      18 at your request -- did you personally perform      19 any literature review after you were retained      20 in this matter?</p> <p>21 A. Not a systematic one. It would      22 be working from things that I knew. Some of      23 them have citations that I could go follow up      24 on and then receiving things from Analysis</p>	<p style="text-align: center;">Page 125</p> <p>1 record. The time is approximately      2 11:54 a.m. This ends recording Media      3 No. 2.      4 (Recess taken, 11:55 a.m. to      5 12:07 p.m.)</p> <p>6 THE VIDEOGRAPHER: With the      7 approval of counsel, back on the      8 record. Time is approximately      9 12:06 p.m. This marks the beginning      10 of recording Media No. 3.</p> <p>11 Q. (BY MR. GOTTO) Professor      12 Baker, you list in your report at appendix --      13 the testimony you've given, expert testimony      14 since 2015, and I -- I asked you a little      15 earlier regarding when you first gave expert      16 testimony, which I think you indicated went      17 back to the 1990s at some point.</p> <p>18 Can you recall the names of any      19 of the cases in which you were engaged in      20 which you provided expert testimony prior to      21 2015?</p> <p>22 A. The names of the cases. No.      23 No.</p> <p>24 Q. Okay. Can you recall the names</p>

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<p>1 of any of the law firms or lawyers who      2 retained you in matters in which you provided      3 testimony prior to 2015?</p> <p>4 A. No, I'm afraid not.</p> <p>5 Q. Did you provide trial testimony      6 in any matter prior to 2015?</p> <p>7 A. No.</p> <p>8 Q. So just deposition testimony      9 would be the limit?</p> <p>10 A. Yes.</p> <p>11 Q. In any of the matters, whether      12 before or after 2015, in which you provided      13 testimony, to your knowledge has there ever      14 been a motion made to a court seeking to      15 eliminate or exclude your testimony?</p> <p>16 A. I'm aware of one time a motion      17 like that was made. It was not granted.</p> <p>18 Q. So there's never been an order      19 entered limiting or excluding testimony      20 you've proposed to give in any matter, to      21 your knowledge?</p> <p>22 A. No.</p> <p>23 Q. I'm sorry. I asked the      24 question with a negative answer, which is</p>	<p>1 you've reached in this matter?</p> <p>2 A. That's my intent with this      3 section. Of course the full set of opinions      4 is expressed in the full set of the report,      5 but this was intended to be a summary.</p> <p>6 Q. Sure. And fair to say that the      7 opinions you express in your report and were      8 summarized in paragraphs 11 to 15 are all in      9 the nature of criticisms or critiques of the      10 opinions expressed by plaintiffs' experts?</p> <p>11 A. Yes. That was my assignment,      12 to review and respond to that set of expert      13 reports. And so the report is focused on      14 that, yes.</p> <p>15 Q. So you haven't formulated any      16 opinions that are independent of the opinions      17 expressed by plaintiffs' experts that you      18 comment on in your report; is that fair?</p> <p>19 MR. BREWER: Objection to form.</p> <p>20 THE WITNESS: I believe my      21 report was, yes, responsive to the      22 request that I look at those expert      23 reports and comment on them. So I      24 believe that's correct, yes.</p>
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<p>1 going to be confusing when you read the      2 transcript.</p> <p>3 Is it correct that you have      4 never -- there's never been an order entered      5 limiting or excluding testimony you proposed      6 to give in a matter?</p> <p>7 A. Yes, it's correct that there      8 has never been such an order.</p> <p>9 Q. Okay. You were good enough to      10 provide Exhibit 6, which has correction or      11 supplement -- I guess corrections to your      12 report.</p> <p>13 I would ask that if you become      14 aware of any other inaccuracies or errors in      15 your report that you would like to correct      16 before trial, if you would supplement      17 Exhibit 6 rather than wait for trial to make      18 those corrections, that would be helpful.</p> <p>19 Let's turn to your -- the      20 substance of the opinions that you express in      21 your report. On pages 4 to 5 of your report,      22 you have your summary of conclusions. Fair      23 to say that -- that's Section 2 -- paragraphs      24 11 through 15 summarize the opinions that</p>	<p>1 Q. (BY MR. GOTTO) In the      2 preparation of your report, were there any      3 documents or testimony that you requested      4 that you did not receive?</p> <p>5 A. No.</p> <p>6 Q. To your knowledge, are you      7 aware of any information that has not been      8 available to you that could either strengthen      9 or weaken any of the opinions you've      10 expressed in this matter?</p> <p>11 A. I can't think of any right now.</p> <p>12 Q. Are there any facts that could      13 influence or change any of the opinions      14 you've expressed in this matter?</p> <p>15 MR. BREWER: Objection to form.</p> <p>16 THE WITNESS: My opinions are      17 responding to these expert reports,      18 and I feel like I was able to consider      19 them and I had adequate information to      20 do that. So, no, I don't have      21 anything in mind to -- that would      22 allow me a different answer than no to      23 your question.</p> <p>24 Q. (BY MR. GOTTO) How would you</p>

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<p>1 characterize the degree of certainty to which      2 you hold the opinions you've expressed in      3 this matter?</p> <p>4 A. I'm very confident about these      5 opinions.</p> <p>6 Q. In paragraph 11 on page 4 of      7 your report, you state that: Plaintiffs'      8 experts' methodology does not establish that      9 Walgreens' alleged failure to appropriately      10 monitor the prescription opioid shipments      11 that it distributed caused any harm to the      12 Bellwether counties.</p> <p>13 Did I read that correctly?</p> <p>14 A. Yes, I think so.</p> <p>15 Q. And then you go on to elaborate      16 on that in the balance of that paragraph.</p> <p>17 I want to be sure I understand      18 the basis for the opinion that you summarize      19 in paragraph 11. Can you point out to me in      20 your report where you describe the basis for      21 that opinion?</p> <p>22 A. That in some sense is      23 throughout the report. So we could look at      24 different sections, but the -- that would</p>	<p>1 A. Yes. Those are the titles of      2 those figures.</p> <p>3 Q. And are those the causal links      4 that you're -- that you're referring -- that      5 you referred to in your answer a moment ago      6 in terms of the -- what you view as      7 inadequacies in the plaintiffs' expert      8 reports?</p> <p>9 A. I would say my opinion is      10 possibly even more general than these two      11 figures. My opinion generally is that there      12 has not been shown to be a link between any      13 alleged activity or lack of activity by      14 Walgreens and the harms that are at issue in      15 this matter.</p> <p>16 These are illustrations of what      17 I took to be possible causal chains as      18 alleged in the matter, and so I work through      19 these to discuss the failure to create a      20 causal chain. I would say that my opinion      21 about the lack of causality or lack of a      22 causal link would extend possibly beyond      23 these if other people were to say, Well, I      24 had a different causal chain in mind. I</p>
<p style="text-align: center;">Page 131</p> <p>1 encompass the failure of the structure of the      2 several reports to create a causal chain, if      3 you will, that would link some action of      4 Walgreens to the harms.</p> <p>5 It would go to the validity of      6 the analyses that were conducted by Professor      7 Rosenthal, by Professor Cutler, by Professor      8 Gruber, and ultimately by Professor McGuire      9 using those inputs, and the lack of proof of      10 a causal connection in the methodologies and      11 the analyses used in those reports.</p> <p>12 And so in some sense this      13 summarizes the entire -- this summarizes work      14 in the entirety of my report.</p> <p>15 Q. If we turn to pages 16 and 17      16 of your report, you have Figures 2 and 3      17 that -- where you graphically depict what you      18 referred to as Causal Links Alleged By      19 Plaintiffs Between Walgreens' Alleged      20 Misconduct and Prescription Opioid Mortality,      21 in the case of Figure 2; and in the case of      22 Figure 3, Causal Links Alleged By Plaintiffs      23 Between Walgreens' Alleged Misconduct and      24 Illicit Opioid Mortality; correct?</p>	<p style="text-align: center;">Page 133</p> <p>1 think I would still say I don't see a causal      2 chain overall.</p> <p>3 Q. If we look at paragraph 33 of      4 your report. Starting in the second      5 sentence, you say: To show that Walgreens'      6 alleged misconduct caused an increase in      7 prescription opioid mortality and harms to      8 the Bellwether counties, one would need to      9 demonstrate that, and then you list three      10 circumstances; correct?</p> <p>11 A. Yes, I see that sentence.</p> <p>12 Q. Okay. So is that statement in      13 paragraph 33, including circumstances one,      14 two, and three, that I didn't take the time      15 to read, is that your description of what      16 would, if established, constitute a causal      17 link between misconduct and prescription      18 opioid mortality?</p> <p>19 A. So I identify this as a causal      20 chain that I inferred to be alleged from the      21 materials that I read, and so I characterize      22 it in this way.</p> <p>23 One would need to demonstrate      24 those steps, and then the entirety of the</p>

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<p>1 linkage between all of those steps being      2 accurate in the data or in the analyses to      3 establish a causal chain.</p> <p>4 Q. Okay. And what I'm trying to      5 be sure I understand is, in paragraph 33,      6 whether you're describing -- whether you're      7 characterizing what you understand to be the      8 plaintiffs' allegation of the causal chain,      9 or are you describing what you believe would      10 be a causal chain if, in fact, those      11 circumstances were demonstrated?</p> <p>12 A. So what I'm trying to make --      13 the larger point I'm trying to make here is      14 that there is no causal chain established.      15 So in order to walk through some steps in      16 that discussion, I outlined what I thought to      17 be a causal chain that was in the background      18 of the plaintiffs' reports that I was      19 reviewing.</p> <p>20 And so I characterized it this      21 way in order to set up my broader discussion,      22 which leads me to the conclusion that there      23 isn't a causal chain established here.</p> <p>24 Q. So in paragraph 33, though,</p>	<p>1 that's the context in which I'm      2 setting this up.</p> <p>3 Q. (BY MR. GOTTO) And when you      4 used the phrase in paragraph 33, "One would      5 need to demonstrate," are you opining that      6 the circumstances listed under causes one,      7 two, and three, as a legal matter, are      8 elements of a claim asserted by the      9 plaintiffs?</p> <p>10 MR. BREWER: Objection, form.      11 And to the extent it calls for a legal      12 conclusion.</p> <p>13 THE WITNESS: Yes. So let me      14 be careful just to say that I am not      15 going to make a legal judgment. I'm      16 not a lawyer.</p> <p>17 This is to write down what I      18 think is in the -- what I thought when      19 I was writing this report, and still      20 think, is in the background of      21 plaintiffs' reasoning, or would have      22 to be in some way for them to be      23 thinking about the causal chain that      24 they allege exists. And so by putting</p>
<p style="text-align: center;">Page 135</p> <p>1 you -- when you say: To show that Walgreens'      2 alleged misconduct caused an increase in      3 prescription opioid mortality and harms to      4 the Bellwether counties, one would need to      5 demonstrate that, and then you list      6 circumstances one, two, and three, are you      7 saying that that's the only way that a causal      8 link between the alleged misconduct and      9 increase in prescription opioid mortality      10 could be demonstrated?</p> <p>11 MR. BREWER: Objection, asked      12 and answered.</p> <p>13 THE WITNESS: So I believe we      14 just walked through this. I set this      15 up because my larger point is that a      16 causal chain has not been established.      17 And so in order to organize a      18 discussion relevant to what was in the      19 plaintiffs' -- or expert reports, I      20 characterized a causal chain that I      21 believed they were reasoning with, in      22 this way, and then I walked through      23 the ways in which I believe the causal      24 chain is established here. And so</p>	<p style="text-align: center;">Page 137</p> <p>1 this down, I can use it to organize my      2 writing about why a causal chain      3 doesn't exist in this case, is not      4 proven. And that's what I mean by      5 that part of the report.</p> <p>6 Q. (BY MR. GOTTO) Okay. And      7 so -- just so I understand, you're not      8 opining in your report or in paragraph 3 or      9 elsewhere in your report as to the legal      10 elements of any claim that the plaintiffs      11 need to establish in order to prevail.</p> <p>12 Is that fair?</p> <p>13 MR. BREWER: Same objection.</p> <p>14 THE WITNESS: I'm opining as an      15 economist looking at the issues here      16 and the analyses in these reports.      17 I'm not here with a legal conclusion      18 or a legal opinion.</p> <p>19 MR. GOTTO: Okay.</p> <p>20 Q. (BY MR. GOTTO) Okay. And if      21 we turn to paragraph 34, on page 16, you      22 state: To show that Walgreens' alleged      23 misconduct caused an increase in illicit      24 opioid mortality, one would need to</p>

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<p>1 demonstrate that, and then you list four      2 circumstances; correct?      3 A. Yes, I see that.      4 Q. When you use the word "illicit"      5 in paragraph 34, what do you mean by that?      6 A. I'm generally referring to the      7 illegal use of opioids, for instance, heroin.      8 Q. Okay. So if someone obtained a      9 prescription for opioids by lying to their      10 doctor, for example, about their tolerance of      11 ibuprofen, would their use of those opioids      12 be illicit in your -- as you use the term?      13 A. So some of this --      14 MR. BREWER: I'm just going to      15 object to the extent it's an      16 incomplete hypothetical.      17 THE WITNESS: So again, what's      18 happening here is I'm trying to set up      19 causal chains or alleged causal chains      20 that I think are relevant to an      21 analysis of whether there is a causal      22 chain established here. So I think      23 these are expressions of things that      24 were in the -- or I can infer were in</p>	<p>1 just want to be sure I understand what you're      2 saying in paragraph 34 and when you use the      3 word "illicit." I'm understanding from your      4 last answer that you're not necessarily      5 limiting illicit to -- to being drugs      6 obtained other than from a registered DEA      7 registrant.      8 MR. BREWER: Objection -- well,      9 is that a question -- is that the      10 question?      11 MR. GOTTO: Yes. I want to      12 know if that's a fair understanding of      13 how he's using the word "illicit."      14 THE WITNESS: Yes, I don't      15 know -- I don't need -- I don't think      16 it matters particularly to my analysis      17 which way that goes.      18 So in certain contexts, I might      19 say that, yes, maybe that there are      20 data or other things in which one      21 would confine illicit to be heroin or      22 other things, it wouldn't matter to my      23 conclusion.      24 MR. GOTTO: Okay.</p>
<p>1 the background of the plaintiffs'      2 experts' reasoning.      3 Whether one would characterize      4 that particular scenario in the      5 hypothetical as illicit or as      6 prescription, something of a function      7 of the kind of analysis or thinking      8 one would be doing at the time, how      9 it's characterized in the data, other      10 things.      11 So I don't know that I need to      12 put it in one of these categories. I      13 would tend to think of that as      14 illicit, but I don't know that that      15 needs to be the case. I'm not sure      16 how I would change that if I were      17 doing different kinds of analyses.      18 So these are meant to      19 characterize a set of links that allow      20 me to structure a discussion that --      21 in which I express my conclusion or      22 come to my conclusion that there is no      23 causal link here.      24 Q. (BY MR. GOTTO) Okay. But I</p>	<p>1 Q. (BY MR. GOTTO) Look at      2 paragraph 38 of your report. The concluding      3 sentence states: As I will discuss in more      4 detail below, Plaintiffs' experts have not      5 provided a method that would allow them to      6 isolate the effect of Walgreens' alleged      7 misconduct from the impact of these other      8 factors on prescription opioid use.      9 Did I read that correctly?      10 A. Yes.      11 Q. What are the other factors that      12 you're referring to in that sentence?      13 A. So the literature includes      14 numerous factors that can be involved in      15 opioid use, and they include a wide range of      16 individual and contextual characteristics.      17 And the plaintiffs' experts here have not      18 produced a method that would allow them to      19 identify Walgreens' -- the effect of      20 Walgreens' alleged misconduct separate from      21 other factors -- individual characteristics,      22 economic characteristics, insurance      23 characteristics -- other characteristics that      24 could also be affecting opioid use here.</p>

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<p>1 Q. Would the other factors that      2 you are referring to in that sentence include      3 misconduct by other defendants in this      4 litigation?</p> <p>5 MR. BREWER: Objection, form.</p> <p>6 THE WITNESS: The report refers      7 to a number of different pieces of      8 evidence that were the things that I      9 had in mind.</p> <p>10 So I hadn't even considered      11 that particularly.</p> <p>12 Q. (BY MR. GOTTO) Well, the      13 language that you use in 38, you talk about      14 the -- to isolate the effect of Walgreens'      15 alleged misconduct from the impact of these      16 other factors. So I'm just trying to      17 understand. When you said that, are you --      18 did you mean to refer to isolating Walgreens'      19 alleged misconduct from, among other things,      20 misconduct alleged by the other -- any other      21 defendants in the litigation?</p> <p>22 A. Oh, I mean what I say in the      23 overall report here. So the report      24 identifies other factors as I've said.</p>	<p>1 A. Yes. So the -- what I'm      2 specifically thinking about in the sentence      3 that precedes this in paragraph 38, where I      4 say a number of other independent factors      5 identified in medical studies contributed to      6 the observed increases, those are referred to      7 later in the report. They'll be things like      8 changes in the prevalence of diabetes or      9 cancer survivorship, changes in treatments of      10 pain, things like that. And so that's what's      11 meant by that.</p> <p>12 And as I discuss those in more      13 detail, that's what I'm referring to in the      14 last sentence. And I conclude that those --      15 that the plaintiffs' experts have not      16 provided a method that identifies the effect      17 or any effect of Walgreens' alleged      18 misconduct separate from those other factors.</p> <p>19 Q. Thank you.</p> <p>20 If you'd turn to paragraph 50      21 of your report and pages 22, 23.</p> <p>22 A. Yes.</p> <p>23 Q. In this paragraph you lead in      24 by saying, Plaintiffs' experts contribute not</p>
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<p>1 Individual, contextual, insurance      2 characteristics are the things that I have in      3 mind.</p> <p>4 I make the point in other parts      5 of the report that the methods would not      6 distinguish manufacturers from distributors      7 in other things -- in other -- make other      8 distinctions. The methods simply don't do      9 that. And so the points that I make with      10 respect to the question you're asking are      11 expressed in the report, and they're the      12 things I just summarized.</p> <p>13 Q. So you end that answer by      14 saying: I mean what I say in the overall      15 report here. And I'm -- I'm trying to get at      16 that same concept, what you mean in the      17 overall report, because you've -- in      18 paragraph 38 you make reference to these      19 other factors, which earlier in paragraph 38      20 are only very generally alluded to.</p> <p>21 And I'm just trying to      22 understand what those other factors are, or      23 if you can direct me where in the report you      24 identify those other factors.</p>	<p>1 only prescription opioid mortality, but also      2 almost all of the opioid mortality after 2010      3 to Walgreens' and other Defendants' alleged      4 misconduct.</p> <p>5 And then in the last two      6 sentences of that paragraph, you state: In      7 order for Plaintiffs' experts to establish      8 this claim, they must make the same      9 assumptions regarding an alleged causal link      10 between alleged insufficient monitoring and      11 prescription opioid abuse described above and      12 shown in Steps 1 and 2 of Figure 3. And      13 Figure 3 we looked at a few moments ago.</p> <p>14 You then go on to say:      15 Further, they must also assume the      16 prescription opioid addiction was the primary      17 driver of increased abuse of illicit opioids      18 and associated mortality.</p> <p>19 And my question for you is,      20 what do you mean by the phrase "primary      21 driver" in that sentence?</p> <p>22 A. Oh, I'm referring back to      23 Figure 3. And this is, again, an      24 illustration of a potential causal chain that</p>

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<p>1 seems to me to be relevant to the plaintiffs'      2 allegations. And so I'm beginning here in      3 Section B to walk through the reasons that      4 that is not established.</p> <p>5 And so what I'm simply doing in      6 this paragraph is summarizing what I think is      7 the -- is the background structure here.</p> <p>8 So you asked about primary      9 driver. I -- what I'm trying to say is, in      10 order for this to go through, you have to      11 have all of those steps. That's the context,      12 and that's the intention of this paragraph.</p> <p>13 Q. Okay. And maybe I'm      14 misunderstanding the last sentence, though,      15 because it starts off by saying: Further --</p> <p>16 Which suggests to me that      17 it's -- this is something beyond what's      18 covered in Figure 3.</p> <p>19 -- they must also assume that      20 the prescription opioid addiction was the      21 primary driver of increased abuse of illicit      22 opioids and associated mortality.</p> <p>23 And I -- I didn't think this      24 constituted the primary driver was included</p>	<p>1 paragraph -- or Figure 3 and walking through      2 the pieces there.</p> <p>3 Q. If you look back at      4 paragraph 15 on page 5 of your report.</p> <p>5 A. Yes.</p> <p>6 Q. You state that: The      7 methodologies employed by Professor      8 Rosenthal, Dr. McCann, Professor Cutler,      9 Professor McGuire, Professor Gruber also      10 suffer from flaws that render them each      11 unreliable for their respective purposes.      12 These flaws include errors in statistical      13 modeling, reliance on unsupported      14 assumptions, and inappropriate inferences of      15 causation in the estimated relationships of      16 interest.</p> <p>17 Can you point out to me where      18 in your report you identify the various flaws      19 that you're summarizing in paragraph 15?</p> <p>20 A. Yes. So we'd have to go to      21 specific sections of the report, but there      22 are specific comments on the methodologies      23 used by Professor Rosenthal, Dr. McCann,      24 Professor Cutler, Professor McGuire, and</p>
<p>1 in Figure 3. So I'm just trying to      2 understand what you mean by that.</p> <p>3 A. Oh. So what that is capturing      4 is really the third step, that there has to      5 be a causal piece in that third step where      6 the people become addicted to prescription      7 opioids and then transition to using illicit      8 opioids because of the addiction.</p> <p>9 So that has to be established      10 after you go through Steps 1 and Step 2, as      11 I've illustrated it in that figure.</p> <p>12 Q. And is that -- do you reach      13 that conclusion sort of purely as a logical      14 matter, or do you base it on something else?</p> <p>15 A. So this -- this is as we've      16 discussed before. What I try to do is      17 illustrate what could have been the causal      18 chain in the background of the plaintiffs'      19 expert analyses. And then I walk through --      20 I use that as a structure to walk through the      21 reasons that I don't believe it's      22 established.</p> <p>23 So that's all that this      24 paragraph is doing, also, is referring to</p>	<p>1 Professor Gruber in the report. And so there      2 are specific sections for each, and that      3 would contain the particular -- particular      4 points I'm trying to make.</p> <p>5 Q. Okay. So fair to say that all      6 of the flaws that you're referring to in      7 paragraph 15 are identified elsewhere in your      8 report?</p> <p>9 A. Yes. I -- so I believe this is      10 a summary of the report and the points in the      11 report.</p> <p>12 MR. GOTTO: Okay. Why don't we      13 take just a couple of minutes for me      14 to review my notes.</p> <p>15 THE VIDEOGRAPHER: With the      16 approval of counsel, going off the      17 record. The time is approximately      18 12:40 p.m. This marks the end of      19 Recording No. 3.</p> <p>20 (Recess taken, 12:41 p.m. to      21 12:45 p.m.)</p> <p>22 THE VIDEOGRAPHER: With      23 approval of counsel, back on the      24 record. The time is approximately</p>

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1      12:44 p.m. This marks the beginning 2      of recording Media No. 4.	1      INSTRUCTIONS TO WITNESS 2 3      Please read your deposition over 4      carefully and make any necessary corrections. 5      You should state the reason in the 6      appropriate space on the errata sheet for any 7      corrections that are made.
3      MR. GOTTO: Professor Baker, I 4      have no further questions. Thank you 5      for your time.	8      After doing so, please sign the 9      errata sheet and date it.
6      MR. BREWER: And I have no 7      questions.	10     You are signing same subject to 11    the changes you have noted on the errata 12    sheet, which will be attached to your 13    deposition.
8      THE WITNESS: Okay.	14     It is imperative that you return 15    the original errata sheet to the deposing 16    attorney within thirty (30) days of receipt 17    of the deposition transcript by you. If you 18    fail to do so, the deposition transcript may 19    be deemed to be accurate and may be used in 20    court.
9      MR. GOTTO: Great.	21 22 23 24
10     THE VIDEOGRAPHER: This 11    concludes today's video deposition. 12    The time is approximately 12:45 p.m. 13    We are now off the record.	
14     (Proceedings recessed at 15    12:45 p.m.)	
16     --oo--	
17 18 19 20 21 22 23 24	
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1      CERTIFICATE 2      I, DEBRA A. DIBBLE, Registered 3      Diplomate Reporter, Certified Realtime 4      Reporter, Certified Realtime Captioner, 5      Certified Court Reporter and Notary Public, 6      do hereby certify that prior to the 7      commencement of the examination, LAURENCE C. 8      BAKER, Ph.D. was duly sworn by me to testify 9      to the truth, the whole truth and nothing but 10     the truth. 11     I DO FURTHER CERTIFY that the 12     foregoing is a verbatim transcript of the 13     testimony as taken stenographically by and 14     before me at the time, place and on the date 15     hereinbefore set forth, to the best of my 16     ability. 17     I DO FURTHER CERTIFY that pursuant 18     to FRCP Rule 30, signature of the witness was 19     not requested by the witness or other party 20     before the conclusion of the deposition. 21     I DO FURTHER CERTIFY that I am 22     neither a relative nor employee nor attorney 23     nor counsel of any of the parties to this 24     action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.  25     DEBRA A. DIBBLE, RDR, CRR, CRC 26     NCRA Registered Diplomate Reporter 27     NCRA Certified Realtime Reporter 28     Certified Court Reporter 29     Dated: 6-6-19	1      ERRATA 2      PAGE LINE CHANGE 3      _____ 4      REASON: _____ 5      _____ 6      REASON: _____ 7      _____ 8      REASON: _____ 9      _____ 10     REASON: _____ 11     _____ 12     REASON: _____ 13     _____ 14     REASON: _____ 15     _____ 16     REASON: _____ 17     _____ 18     REASON: _____ 19     _____ 20     REASON: _____ 21     _____ 22     REASON: _____ 23     _____ 24     REASON: _____

<p style="text-align: right;">Page 154</p> <p>1        ACKNOWLEDGMENT OF DEPONENT</p> <p>2</p> <p>3</p> <p>4        I, LAURENCE C. BAKER, Ph.D., do hereby certify that I have read the foregoing 5 pages and that the same is a correct transcription of the answers given by me to 6 the questions therein propounded, except for the corrections or changes in form or 7 substance, if any, noted in the attached Errata Sheet.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <hr/> <p>13                          LAURENCE C. BAKER, Ph.D.                          DATE</p> <p>14</p> <p>15        Subscribed and sworn to before me this 16        _____ day of _____, 20 _____. 17        My commission expires: _____</p> <p>18</p> <p>19</p> <p>20        Notary Public</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>	
<p style="text-align: right;">Page 155</p> <p>1        LAWYER'S NOTES</p> <p>2</p> <p>3        PAGE   LINE</p> <p>4        _____   _____   _____</p> <p>5        _____   _____   _____</p> <p>6        _____   _____   _____</p> <p>7        _____   _____   _____</p> <p>8        _____   _____   _____</p> <p>9        _____   _____   _____</p> <p>10       _____   _____   _____</p> <p>11       _____   _____   _____</p> <p>12       _____   _____   _____</p> <p>13       _____   _____   _____</p> <p>14       _____   _____   _____</p> <p>15       _____   _____   _____</p> <p>16       _____   _____   _____</p> <p>17       _____   _____   _____</p> <p>18       _____   _____   _____</p> <p>19       _____   _____   _____</p> <p>20       _____   _____   _____</p> <p>21       _____   _____   _____</p> <p>22       _____   _____   _____</p> <p>23       _____   _____   _____</p> <p>24       _____   _____   _____</p>	